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A BILL TO ADMIT TO THE MAILS AS SECOND-CLASS
MATTER PERIODICAL PUBLICATIONS ISSUED BY OR
UNDER THE AUSPICES OF BENEVOLENT AND FRA-
TERNAL SOCIETIES AND ORDERS AND INSTITUTIONS
OF LEARNING, AND FOR OTHER PURPOSES : : : :

LETTERS AND EXHIBITS

RELATING TO

PUBLICATIONS OF FRATERNAL
SOCIETIES

U.S.
PUBLISHED BY THE COMMITTEE ON
THE POST-OFFICE AND POST-ROADS

MARCH, 1910

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LETTERS AND EXHIBITS RELATING TO PUBLICATIONS OF FRATERNAL SOCIETIES.

FEBRUARY 11, 1910.

HON. FRANK H. HITCHCOCK,
Postmaster-General, Washington, D. C.

MY DEAR SIR: I wish to call your attention to the testimony before this committee, February 4, on the subject of the House bill introduced by Mr. Dodds, of Michigan, giving the second-class rate to fraternal society periodicals. After a reference to the testimony submitted on the above-mentioned date, I should be very glad to have any comments which the department has to make on this subject.

Yours, very truly,

JOHN W. WEEKS.

[H. R. 17543, Sixty-first Congress, second session.]

A BILL To admit to the mails as second-class matter periodical publications issued by or under the auspices of benevolent and fraternal societies and orders and institutions of learning, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act all periodical publications issued from a known place of publication at stated intervals, and as frequently as four times a year, by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons, or a regularly incorporated institution of learning, shall be admitted to the mails as second-class matter, and the postage thereon shall be the same as on other second-class matter and no more: *Provided, however,* That such matter shall be originated and published to further the objects and purposes of such society, order, or institution of learning, and shall be formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications: *Provided further,* That nothing contained in this act shall be so construed as to prevent such periodical publications from containing or carrying advertising matter, whether such matter pertains to such benevolent and fraternal societies and orders and institutions of learning or other persons, institutions, or concerns; it being the purpose of this act to give to such publications the same rights and privileges as to being admitted to the mails as second-class matter as those given to and possessed by all other periodical publications and newspapers admitted to the mails as second-class matter.

SEC. 2. That all acts and parts of acts in conflict herewith be, and the same are hereby, repealed.

OFFICE OF THE POSTMASTER-GENERAL,
Washington, D. C., February 28, 1910.

HON. JOHN W. WEEKS,
*Chairman Committee on the Post-Office and Post-Roads,
House of Representatives, Washington, D. C.*

MY DEAR SIR: In reply to your letter of February 11, 1910, stating that you would be glad to have any comments which the department has to make with reference to H. R. 17543, Second session Sixty-first Congress, and the testimony taken by the com-

mittee in reference thereto on February 4, 1910, the following is submitted:

The copy of the bill received by the department omits certain of the societies for which special provision was made in the act of July 16, 1894, which it is assumed from a reading of the report of the hearing before the committee will be remedied.

Except as noted above, the bill provides for the addition to the act of July 16, 1894, the following:

Provided, further, That nothing contained in this act shall be so construed as to prevent such periodical publications from containing or carrying advertising matter, whether such matter pertains to such benevolent and fraternal societies and orders and institutions of learning or other persons, institutions, or concerns; it being the purpose of this act to give such publications the same rights and privileges as to being admitted to the mails as second-class matter as those given to and possessed by all other periodical publications and newspapers admitted to the mails as second-class matter.

The purpose of the legislation asked for, as understood by the department, is to still further favor societies now specially provided for by the act of July 16, 1894, by having their publications classified as mail matter of the second class without regard to the circulation or the character thereof. In other words, they desire to be accorded the second-class rates for such publications formed of printed paper sheets as they for any reason may care to mail. This amounts, when considered in connection with the present acts of March 3, 1879, and July 16, 1894, to extending to these organizations, societies, etc., the benefits of both acts without the restrictions of either.

It is disclosed by the report of the hearing conducted by your committee that the representatives of the various fraternal societies contend that they are only asking for a retention of the privileges which they have enjoyed for thirty years or more. If the privileges were enjoyed prior to the passage of the act of July 16, 1894, it must have been under the act of March 3, 1879. Why, then, was the act of July 16, 1894, passed? It is hardly possible that they sought by additional legislation that which they already possessed. The fact is that although these publications may have enjoyed such benefits as claimed, yet under opinions of the Assistant Attorney-General for the Post-Office Department (see Exhibit A), rendered prior to 1894, the members of societies claimed as subscribers to such publications were repeatedly not recognized as legitimate. In this connection attention is invited to paragraph 3, section 332, of the Postal Laws and Regulations, edition of 1887. (See Exhibit B.)

From the above it will therefore be apparent that the act of July 16, 1894, was intended as a relief measure from the rulings of the Post-Office Department under the act of March 3, 1879, which were substantially the same then as now in respect of not recognizing persons as subscribers merely by reason of their being members of a society and paying dues thereto.

The manifest purpose of Congress in passing the act of July 16, 1894, was to extend to fraternal and other societies the right to mail at the second-class rates of postage publications issued by or under their auspices for the purpose of communicating information, assessment notices, etc., relating to such societies, thereby recognizing the desirability of extending the low second-class rates to the literature of such organizations, but not conceding the advisability of giving them unrestricted circulation coupled with general advertising rights.

After the rendition of an opinion by the Assistant Attorney-General for the Post-Office Department, on January 24, 1901 (Exhibit C), covering this question many publishers of fraternal papers applied for reentry under the act of March 3, 1879, and they were admitted if their claimed list of subscribers came within the following classification:

(1) Where so-called subscriptions of members are paid by deducting the subscription price from the membership fees or dues under a provision of the constitution or by-laws of the organization to the effect that such part of each member's dues or fees is set aside to pay his subscription.

(2) Where the subscription takes the form of a definite statement over the member's signature when transmitting his fees or dues that a stated portion shall be used for the purpose of paying his subscription.

(3) Where subscriptions of members of societies are paid for from funds contributed by the members and such funds belong to the society.

The above rulings are contained in Circulars XX and XXI, Exhibits D and E, respectively.

Under these rulings it repeatedly came to attention that the prescribed conditions were not being met; that the expense of publishing the paper was merely paid out of the general funds of the society, and charges were made that the department was not placing a proper construction on the law; that unjust discrimination resulted therefrom; and that serious injury was being deliberately done in certain instances.

In this connection attention is invited to excerpts from complaints filed with the department. (Exhibit F.)

Ultimately the whole question was carefully considered, resulting in the adoption, early in 1909, of the policy subsequently set forth on pages 315-316 of the Annual Report of the Post-Office Department for the year ended June 30, 1909 (Exhibit G), and the inclosed copy of a letter addressed to Hon. A. F. Lever, M. C. (Exhibit H).

On page 288 of the testimony before your committee Mr. Williams, representing the National Fraternal Press Association, read into the record a letter addressed to Mr. F. O. Van Galder, editor of the Modern Woodman, and made the assertion:

Thus the "Home department," the "Fashion department," and the "Review of books" were ruled out.

In order that the exact facts in regard to this matter may be understood and that it may be clear that Mr. Williams should have known that the department had not ruled as he stated, I beg to invite your attention to the inclosed copy of a letter on this subject addressed to the Third Assistant Postmaster-General by Mr. Williams under date of January 29, 1909, and the answer thereto of February 3, 1909 (Exhibit I), particularly the last paragraph of the letter, which reads as follows:

As to the statement that a ruling was made in the Modern Woodman case that it "could not publish stories or serials or a household or fashion department, or any other matter not directly pertaining to the work or interest of the order," you are informed that the information you have obtained is entirely erroneous, and this question was not passed upon in the case in question.

Other correspondence pertinent to this subject with Mr. Williams and Mr. Clinton C. Hollenback, president and secretary-treasurer, respectively, of the National Fraternal Press Association, is also submitted as Exhibit J. It is deemed proper to say that neither of these gentlemen accepted the invitation of the department to appear for a discussion of this subject.

From the above it will be seen that if fraternal and other publications referred to in the testimony taken by your committee contain the matter which the various representatives state it is desired to publish therein, and the same meet the requirements of the act of March 3, 1879, in so far as circulation is concerned, application for entry thereof under that act would receive favorable consideration. Many fraternal publications are now entered under the act of March 3, 1879, and have apparently little difficulty in meeting the requirements of the law.

It seems that the publishers, from their testimony before your committee, are laboring under the belief that they are being discriminated against by the department with reference to the act of March 3, 1879, and their appearance before you is stated to be to obtain for them certain rights which the ordinary publishers enjoy, but which these fraternal publishers do not enjoy. The fact is, as has been shown in Exhibit F, that for several years prior to 1909 the ordinary publisher had just cause for complaint, because of the extension of the privileges of the act of March 3, 1879, to publishers of publications specially provided for in the act of July 16, 1894, without the necessity of meeting the requirements of the former in respect of a "legitimate list of subscribers." The present agitation arises by reason of the department now requiring the fraternal publishers to meet the same requirements that are met by publishers whose publications are entered under the act of March 3, 1879. Consequently, if fraternal organizations can not meet these requirements, they still have a preferential privilege of entry under the act of July 16, 1894, which is not open to ordinary publishers.

Comparing the provisions of the act of March 3, 1879, and of July 16, 1894, the one is found to be the antithesis of the other in almost every essential particular. For instance, under the first the publication must be "originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry;" under the other it must be "originated and published to further the objects and purposes" of the organization. The first requires a "legitimate list of subscribers," and prohibits those designed for "free circulation;" the second places no restriction upon the circulation of a publication. The first prohibits a publication "designed primarily for advertising purposes;" the second requires that the publication be published to "further the objects and purposes" of the organization, i. e., to advertise and promote its interests. The first provides specifically that advertisements may be inserted therein if permanently attached thereto; the other does not make any such provision and limits the scope of the publication to a furtherance of the "objects and purposes" of the society.

The essence of the act of March 3, 1879, is that the publisher may not mail a copy of his publication to a person unless there is the actual demand from a subscriber thereto. Hence the right of a publication to entry under that act is entirely dependent upon a demand for the publication from a buying public, thus adhering to the fundamental principle of supply and demand. If the desires of the publishers whose publications are now entitled to entry under the act of July 16, 1894, are met, all of the above mentioned restrictions of the act of March 3, 1879, which ordinary publishers are compelled to meet, are wholly removed.

I question the wisdom of taking out of the hands and substantial control of the individual American citizen the right now enjoyed by him to determine whether he shall or shall not be a subscriber to a publication independent of a society membership. Occasionally organizations are split into opposing factions, resulting in the members of one faction desiring to rid themselves of receiving the official publication. Under the proposed legislation the desired relief could not be afforded unless the individual should refuse to accept the publication, in which event the department would be compelled to transport the publication to the office of delivery at a cost far in excess of the postage paid thereon without the purpose of the law being attained.

If this proposed bill should be enacted into a law, the publications entered thereunder could be circulated to whomsoever the officers of the society desired for any reason whatsoever, and they might immediately place in the hands of the advertisers of the country the free circulation of these publications entirely in the interest of such advertisers. This would directly result in placing the cent-a-pound rate of postage at the disposal of the advertisers, who must now pay substantially 8 or more cents a pound to circulate their advertising matter. For instance, the firms of Sears, Roebuck & Co. and Montgomery Ward & Co., mentioned in the hearing (p. 318), send out at the present time a large number of catalogues upon which they pay postage at the third-class rate. Under the provisions of the proposed law there would be no reason why these firms could not contract with the publishers of these papers to print the whole, or at least a portion, of their catalogues as an integral part of the publication and have the same mailed to a list of names furnished by these concerns. Further, even if the privileges of the second-class rates were extended only to copies circulated to the membership of such organizations, there would result a tremendous increase in mailings due to the advertising patronage which these organizations would be able to command, and which the law would not control, as there is no stricture upon the amount of advertising which might be inserted. Whole issues might be devoted to advertising.

In this connection your attention is also invited to copies of recent issues of the Modern Brotherhood, published at Cedar Rapids, Iowa (Exhibit K), and the Lady Maccabee, published at Port Huron, Mich. (Exhibit L), which publications would be provided for in this proposed legislation. Considering the character of some of the advertisements appearing therein, which have been marked, I venture to assert that the publishers of these papers would be regularly importuned to send out large numbers of copies thereof to persons primarily for the purpose of circulating the advertisements appearing therein; and when it is considered that payment for advertising is usually based upon a guaranteed circulation it may very readily be seen that an almost unlimited circulation could be provided for these publications in the interest of the various advertisers.

So valuable an asset is the cent-a-pound second-class rate that I do not believe I am overstepping the bounds of reason in predicting that if the proposed law is passed societies, organizations, and institutions apparently within its provisions would be established for the sole purpose of obtaining and trafficking in that rate of postage on behalf of advertisers.

It will be conceded that while the act of July 16, 1894, was passed in the interest of benevolent, fraternal, trades union, and educational organizations, it is in effect class legislation in that it extended to these organizations privileges not enjoyed by the ordinary publisher. Much criticism is continually being aimed at this act by organizations not benefited thereby and who regard themselves to be fully as deserving in the matter of postage rates as the organizations particularly provided for. For instance, churches, public libraries, religious organizations, the blind, public schools, state and municipal educational organizations not regularly incorporated, the Y. M. C. A., the W. C. T. U., and many others which might be mentioned; and if the legislation provided for in this bill is enacted into a law, those particular institutions already highly favored by the aforesaid act will be still more privileged and the discrimination much more apparent.

As pertinent to this subject I invite attention to the inclosed copy of Circular XVII (Exhibit M), containing a decision of the supreme court of the District of Columbia in the case of the Chicago Business College *v.* Payne, which decision was affirmed by the court of appeals of the District of Columbia, wherein it is stated by Justice Barnard:

The benevolent or fraternal societies are required to have a membership of not less than 1,000 persons before they can have the benefit of second-class mail rates for their publications, and the publications to be admitted must be originated and published to further the objects and purposes of the society or institution. These two parts of the act indicate to my mind that the benefit to be granted was one to the public and not to the stockholders or members of any business organization. In other words, the matter to be so carried was to be of a character that interested and benefited at least 1,000 persons, if the society was of a benevolent or fraternal character, organized on the lodge system, and if of the other characters named, that a large number of recipients of the publications might be benefited by receiving useful information and instruction. It does not seem correct to conclude that Congress intended by said act to give any money-making corporation the right to cheaper rates of postage on advertisements for no other reason than to enable them to save on their expenses and thus make more money.

If a benevolent or fraternal society having its publication entered under the act of July 16, 1894, were permitted to carry general advertisements therein in addition to the "useful information and instruction" referred to by the court, each member would share in the "money making" to the extent that his dues are reduced on account of the profits from such advertisements and thus, instead of the cheaper rates of postage being granted, as stated by the court, to the public, it would in effect be a grant from the Public Treasury to members of fraternal organizations.

As the proposed legislation is viewed from an administrative standpoint, it is contradictory in itself, in that, while restricting the purpose for which the publication is issued to a furtherance of the objects and purposes of the organization, it by its terms extends the right to include in publications admitted thereunder general advertisements, manifestly, not published to further the objects and purposes of the society, etc., as such.

Furthermore, in the event that it is proposed to limit the circulation of these publications to the members of the society, attention is invited to the fact that publications issued by "regularly incorporated institutions of learning" and "bulletins issued by state boards of health," now provided for in the act of July 16, 1894, would be deprived of the second-class privileges which they now enjoy, as they have no membership.

In view of the foregoing, I am unable to favor the enactment of the proposed bill into law.

Yours, very truly,

FRANK H. HITCHCOCK,
Postmaster-General.

EXHIBIT A.

OPINIONS OF THE ASSISTANT ATTORNEY-GENERAL FOR THE POST-OFFICE DEPARTMENT AS TO THE LEGITIMACY OF A LIST OF SUBSCRIBERS CLAIMED FOR A PUBLICATION SEEKING ENTRY UNDER THE ACT OF MARCH 3, 1879, MADE UP OF MEMBERS OF FRATERNAL OR OTHER SOCIETIES.

OCTOBER 14, 1890.

Hon. A. D. HAZEN,

Third Assistant Postmaster-General.

SIR: I am in receipt of your letter of the 12th ultimo, wherein in connection with paragraph 4, section 328, Postal Laws and Regulations, and section 332, Postal Laws and Regulations, you refer to certain publications issued by societies, associations, and others, apparently in conflict with the terms of the law as embodied in such sections.

Under the existing postal laws and regulations, it is a matter of extreme difficulty to lay down any rule that can not be complied with, more or less satisfactorily, by publishers of such papers.

To guide you in this matter, I would suggest:

1. The subscription list should show that the publication is taken by the subscribers, of their own act and solicitation, or that of others in their behalf who thereby also assume the obligation of payment. The act or order of the society or of its officers publishing the paper will not be the act of the individual subscriber and can not be taken as such.

2. There should be a subscription price for the publication paid by the subscriber or some one else in his behalf, separate and distinct, and not included in or made part of any other general lodge, society, or association account rendered against such subscribers by such lodge, society, or association.

3. Such subscription price should be a charge sufficient in amount to prevent the paper from being classed as one where the copies thereof are donated to the subscribers, or circulated at nominal rates.

A rule can not be laid down applicable to each particular case, but these general principles should govern the action of the department in passing upon the right of all publications to the privileges of the mails at the pound rate.

Very respectfully,

JAMES N. TYNER,
Assistant Attorney-General.

APRIL 1, 1891.

Hon. A. D. HAZEN,
Third Assistant Postmaster-General,
Post-Office Department.

SIR: In reply to your letter, M-2 18.90, having reference to the case of the Gavel, a fraternal paper published at Portland, Oreg., I beg to say that the clause referred to in the opinion emanating from this office of date October 14, 1890, requires that the subscription price shall be a separate and direct charge in itself and not a part of any other lodge debt or account rendered against the subscriber thereto.

If the lodge is not publishing the paper, the price of the paper should not be mingled with other lodge accounts taxed against the member and subscriber. Inasmuch as the order and paper are two distinct concerns, the member and subscriber should be equally independent, and the dues of the lodge, by whatever name they are known, and the price of the paper should have no relationship one with the other.

Very respectfully,

JAS. N. TYNER,
Assistant Attorney-General.

OCTOBER 15, 1891.

Hon. A. D. HAZEN,
Third Assistant Postmaster-General.

SIR: I return herewith all the papers, including a copy of the publication entitled "The Equitable League," published monthly by a company composed of the officers of the supreme court of the Order of the Equitable League of America, submitted with your letter of the 25th ultimo.

Your inquiry is whether this publication is entitled to admission into the mails as second-class matter. It is admitted that subscriptions are not collected direct from those whose names appear on the subscription lists, but are levied as assessments on the membership. In the issue of September 1, 1891, which you furnish for my inspection, it is announced in an editorial that "the supreme court adopted this paper as a means of sending the assessments to the membership direct from the supreme office and at the same time to provide a means of furnishing information directly to each member of the order, independent of the local court officers."

It, therefore, seems to be treated by the organization as a circular used in the enforcement and collection of assessments, and for the notification to the members of the amounts or conditions of the assessments. One of the essentials of a legitimate periodical is a bona fide list of subscribers, representing persons who voluntarily and willingly subscribe, including those who accept the publication as the gift of others. Collecting the subscription in the nature of an assessment is a compulsory collection, and can not be considered as constituting "a legitimate list of subscribers" within the meaning of the law.

The pound rate should be denied to The Equitable League.

Very respectfully,

JAS. N. TYNER,
Assistant Attorney-General.

AUGUST 16, 1893.

The POSTMASTER-GENERAL.

SIR: The opinion rendered by Judge Tyner on the 15th day of October, 1891, in which I fully concur, covers the question presented by you verbally to me on the 15th instant, in regard to the mailability of *The Good-Fellow*, as second-class matter.

It appearing that *The Good-Fellow's* subscription list consists of 500 or 600 outside of lodge subscriptions and about 10,000 subscriptions paid for by the lodge without cost to the members beyond regular dues, it has not a "legitimate list of subscribers" within the meaning of section 277, Postal Laws and Regulations. If, as Judge Tyner held in the opinion referred to, the collection of subscriptions in the nature of an assessment from members of a fraternal society does not constitute a "legitimate list of subscribers," a fortiori does not constitute such a list when it is made by the lodge without any assessment whatever for that purpose, and payment for which is made out of funds arising from the regular dues.

I will add that if it appears to you that this paper was not originated and is not published for the dissemination of information of a public character, or devoted to literature, the sciences, or arts, or some special industry, then it can not be admitted to the mails as second-class matter though it have a legitimate list of subscribers. I presume it will not be contended that this paper is devoted to literature, the sciences, or arts, or to a special industry, and, if it comes within the purview of the statute at all, it must be because it was originated and is published for the dissemination of information of a public character. Information of a public character, as here used, I take it, means information that would be of interest to the public generally. Information for the members of a secret society would not, in my opinion, be information of a public character within the meaning of the law. And even though a paper may contain some information of a public character, yet if it was not originated and is not published for the purpose of disseminating such information, but for another purpose, then it is not admissible to the mails as second-class matter.

To be more explicit: If the paper was originated and is published for the purpose of disseminating information of a public character, and the information it contains, which is intended exclusively for the members of the Royal Society of Good-Fellows, is thrown in as an incident only and it has a legitimate list of subscribers, then it is mailable as second-class matter; but, on the other hand, if it was originated and is published primarily for the purpose of giving information to the members of such society, and the poetic and literary gems contained in it are thrown in, as sidelights only, then it is not mailable as second-class matter though it have a legitimate list of subscribers.

I herewith hand you a copy of the opinion of Judge Tyner referred to above.

Respectfully submitted.

JOHN L. THOMAS,
Assistant Attorney-General.

EXHIBIT B.

POSTAL LAWS AND REGULATIONS (EDITION 1887).

SEC. 332. *Subscription price and list requisite.*—Postmasters must require satisfactory evidence that publications offered for mailing at pound rates have a legitimate list of subscribers, by each of whom, or for each of whom, with his consent, express or implied, payment of the subscription price has been made or agreed to be made. Subscription price must be shown by the publication, and will be deemed nominal, within the meaning of section 328, when:

1. The publication asserts or advertises that it is furnished to subscribers at no profit.

2. When it appears from the contents that subscriptions are not made because of the value of the publication as a news or literary journal, but because of its offers of merchandise, or other consideration substantially equal in value to the subscription price, as an inducement to subscription.

3. When the publication is issued for and distributed among the members of a society, association, or club upon payment of regular dues, with no distinct and sufficient charge for the publication.

EXHIBIT C.

OPINION OF THE ASSISTANT ATTORNEY-GENERAL FOR THE POST-OFFICE DEPARTMENT, DATED JANUARY 24, 1901, RELATIVE TO THE CARRYING OF GENERAL ADVERTISEMENTS IN PUBLICATIONS ENTERED UNDER THE ACT OF JULY 16, 1894.

JANUARY 24, 1901.

Hon. EDWIN C. MADDEN,
Third Assistant Postmaster-General.

SIR: I have before me your letters dated November 30, 1900, and December 7, 1900, with which you submitted a number of specimen periodicals, and ask "to have a settlement of the following questions," viz:

First. The right of a publisher, under the "educational" act, to insert any advertisement not pertaining strictly and immediately to the propagation of learning in its technical sense, as inculcating a knowledge of those branches of education which cultivate and enlarge the mind, as distinct from the sale of school furniture or any other article?

Second. The right of a publisher, under the act mentioned, to monopolize the entire publication in airing his own particular school, making the publication essentially a personal business enterprise, as shown by *The Messenger* (one of the papers submitted) referred to.

The "educational act," to which you refer, is as follows:

That from and after the passage of this act all periodical publications issued from a known place of publication at stated intervals and as frequently as four times a year, by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons, or by a regularly incorporated institution of learning or by or under the auspices of a trades union, and all publications of strictly professional, literary, historical, or scientific societies, including the bulletins issued by state boards of health, shall be admitted to the mails as second-class matter, and the postage thereon shall be

the same as on other second-class matter, and no more: *Provided further*, That such matter shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning, and shall be formed of printed paper sheets without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications. (28 Stat. L., p. 105.)

Under this law, to entitle a paper to be sent through the mails at second-class rates, among other things, the matter contained therein "shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning." In reply, therefore, to your inquiry designated "first," I have to state that in my opinion a paper containing advertisements in the interest of other persons or concerns than the society, order, trades union, or institution of learning which such paper represents is not entitled to the privileges of the law quoted. My opinion is strengthened by the fact that the act of Congress (Mar. 3, 1879, 1 Supp. R. S., 246) which authorizes you to accept at second-class rates certain periodical publications having "a legitimate list of subscribers," expressly states:

That nothing herein contained shall be so construed as to prohibit the insertion in periodicals of advertisements attached permanently to the same.

This proviso applies only to the act in which it was incorporated, and as Congress has not seen fit to insert a similar provision in the act of July 16, 1894, we can not place it there.

Your inquiry designated "second" is whether periodicals which comply with the act of July 16, 1894, in other respects, may be denied second-class privileges because the publisher "monopolizes the entire publication in airing his own particular school, thus making the publication essentially a personal business enterprise," and as an illustration you refer to a copy of *The Messenger* which you inclosed. The *Messenger* referred to is simply an advertisement of Highland Park College, Des Moines, Iowa. It is my opinion that if the contents of the periodical are originated and published to further the object and purposes of the institution of learning, etc., under whose auspices the same is issued, that you can not discriminate against such paper simply because the entire contents of the paper are in the nature of an advertisement. I will add that many of these periodical publications which are simply published to "boom" some college can be denied second-class privileges under my opinion to you dated April 4, 1900, in which I discussed the question of the character of institutions to which the act of July 16, 1894, applied. I stated therein:

In my judgment, the aim of the act of July 16, 1894, is to promote the interests of institutions of learning organized for the benefit of the public, and not for any company or person maintaining and conducting a school, college, or place of instruction for the personal benefit of the owner or stockholders.

Very respectfully,

JAS. N. TYNER,
*Assistant Attorney-General for the
Post-Office Department.*

EXHIBIT D.

CIRCULAR XX, DATED DECEMBER 30, 1901, BEING A COPY OF A LETTER SETTING FORTH CONDITIONS UNDER WHICH MEMBERS OF FRATERNAL AND OTHER SOCIETIES WILL BE REGARDED AS FORMING A PART OF A LEGITIMATE LIST OF SUBSCRIBERS REQUIRED BY THE ACT OF MARCH 3, 1879.

C. D. 7834.]

POST-OFFICE DEPARTMENT,
OFFICE OF THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., December 30, 1901.

Mr. F. S. WEBB,

*Manager Advertising Department, Modern Woodman,
87 Washington street, Chicago, Ill.*

SIR: Reconsideration of departmental letter of the 16th ultimo brings into view several phases of the situation not hitherto apparent.

In that communication it was held that the *Modern Woodman* and other similar publications, issued "by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than 1,000 persons" may not, under an opinion of the Assistant Attorney-General for the Post-Office Department (copy inclosed herewith), continue to pass in the mails at the subsidiary second-class rates of postage while containing advertisements in the interest of other persons or concerns than said benevolent or fraternal society or order, etc.

It appears upon analysis of subsequent representations and arguments that the withdrawal of the advertisements in question effects a decrease in the earning capacity of the publications mentioned and causes them to be handicapped seriously in competing with similar journals enjoying upon a subscription basis the subsidy of the second-class rates under the act of March 3, 1879, which law does not impose the restrictions as to advertising which the Assistant Attorney-General for the Post-Office Department rules must be applied to the act of July 16, 1894.

The department is desirous that publishers entitled to the second-class rates for publications for which there is a public demand may participate equally in all the privileges pertaining thereto. Attention is invited to the following departmental ruling, as having a possible bearing upon the case under consideration:

When the claimed list of "legitimate subscribers" upon which is based an application for entry of a publication to the second class of mail matter, under the act of March 3, 1879, is composed, entirely or partly, of members of an organization publishing the same whose subscriptions are paid by deducting the subscription price from their membership fees or dues, it is, for the present, allowed that they may be counted among the legitimate subscribers enumerated in articles 309 and 310, pages 1037 and 1038, January, 1901, Postal Guide; provided it be shown that there is a provision of the constitution or by-laws of the organization to the effect that such a part of each member's fees or dues is set aside to pay his subscription; or when the claimed subscription takes the form of a definite statement over the member's signature, when transmitting his fees or dues, that a stated portion shall be used for the purpose of subscription payment; or when it is arranged that an officer of a local division of the organization acts as agent for the publisher and sends the names and addresses of the members, as subscribers, to the publication office accompanied by the subscription price for each definitely set forth as such.

If subscriptions of members of the Modern Woodmen of America to The Modern Woodman are made so as to come under one or all of the ways held in the above ruling to be legitimate, and the number of such and other legitimate subscriptions approximates (as required by the Postal Laws and Regulations) 50 per cent of the number of copies regularly issued and circulated, by mail or otherwise, and the publishers can submit a publication consisting of current news or miscellaneous literary matter, or both, of a general character, there is good reason to believe that entry to the second class might be effected under the provisions of the act of March 3, 1879, in which case the advertisements ineligible under the act of July 16, 1894, may continue to be printed without jeopardizing its status.

The ruling embodied herein applies also to publications of trades unions and other organizations mentioned in the act of July 16, 1894, whose members pay their subscriptions to the official journal under the methods held legitimate.

If the publisher of the Modern Woodmen and of the other class of publications mentioned herein desire to surrender their entry under the act of July 16, 1894, finding that they are able to meet the requirements as to subscription list, the department will consider an application for renewal of such entry under the act of March 3, 1879, to be submitted through the postmaster at the office of publication.

You are advised of this matter because it is deemed in justice due you. Many publications of fraternal societies are now passing in the mails under the act of March 3, 1879, and are carrying foreign advertising because they are able to comply with the requirements herein laid down. Your publication and the others mentioned shall have the same privilege if they can comply with the conditions.

Very respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster-General.

EXHIBIT E.

CIRCULAR XXI, DATED FEBRUARY 21, 1903, BEING A COPY OF A LETTER SETTING FORTH ADDITIONAL CONDITIONS UNDER WHICH MEMBERS OF FRATERNAL AND OTHER SOCIETIES WILL BE REGARDED AS FORMING A PART OF A LEGITIMATE LIST OF SUBSCRIBERS REQUIRED BY THE ACT OF MARCH 3, 1879.

POST-OFFICE DEPARTMENT,
OFFICE OF THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., February 21, 1903.

EDWIN O. WOOD,

President National Fraternal Press Association, Flint, Mich.

SIR: In answer to your letter of February 4, you are informed that the department recognizes the inequality of privilege and conditions under existing statutes affecting fraternal publications, part of which are entered to the second class of mail matter under the act of March 3, 1879, and another part under the provisions of the act of July 16, 1894. As you are aware, this condition is due to law and not to a departmental regulation.

Those fraternal periodical publications which came into existence prior to the act of July 16, 1894, and secured entry to the second class under the provisions of the act of March 3, 1879, are, of course, entitled to all the privileges conferred by that act, which includes the carrying of advertising matter, while on the other hand, those fraternal publications which have come into existence since the passage of the act of July 16, 1894 (which provided specially for that class of publications), may not, under the opinion of the Assistant Attorney-General for the Post-Office Department, carry advertising matter other than that of their own institutions. A great number of fraternal publications are now being carried in the mails at the second-class rates under the conditions prescribed by the act of March 3, 1879, and a number (probably less than 50 per cent of the whole) have been entered under, and are subject to the provisions of, the act of July 16, 1894.

In order to correct as far as possible the unsatisfactory and anomalous situation complained of in your letter, it has been determined to recognize as legitimate and within the provisions of the act of March 3, 1879, all subscriptions made under the following rule, provided no abuse of the second-class mailing privilege results:

Where the claimed list of legitimate subscribers upon which is based an application for entry of a periodical publication of a fraternal society to the second class of mail matter under the act of March 3, 1879, is composed entirely or partly of members of the fraternal society publishing the same and whose subscriptions are made direct by the members of such society, or where such subscriptions are paid for from the funds of such fraternal society, which funds are contributed by the members and belong to such fraternal society, it is allowed that such subscriptions are legitimate within the meaning of the law, and that they may be counted among and as legitimate subscribers enumerated in Departmental Circular III^a and section 436 of the Postal

The foregoing applies to subscriptions for members only. Subscriptions for such publications obtained from persons who are not members of such societies are not affected by this ruling. It will be understood that in order to secure admission to the second class of mail matter under the provisions of the act of March 3, 1879, the publication, in addition to having a "legitimate list of subscribers," must conform to the other requirements of the statute.

There has been delay in responding to your letter of February 4, owing to the tremendous pressure of public business. This delay, however, appears to be immaterial, because your letter of February 9 to fraternal journals contained notice of the above ruling.

Respectfully,

EDWIN C. MADDEN,
Third Assistant Postmaster-General.

^a Circular III has been superseded by Circular XXV, dated December 16, 1905. Laws and Regulations, herewith inclosed.

SUBSCRIPTION PRICE AND LIST REQUISITE (COPY OF SECTION 436,
POSTAL LAWS AND REGULATIONS).

[Under act of March 3, 1879.]

SEC. 436. Postmasters must require satisfactory evidence that publications offered for entry as second-class matter have, under section 428, a legitimate list of subscribers, approximating 50 per cent of the number of copies regularly issued and circulated, by mail or otherwise, made up not of persons whose names are furnished by advertisers or by others interested in the circulation of the publication, but of those who voluntarily seek it and pay for it with their own money, although this rule is not intended to interfere with any genuine case where one person subscribes for a definite period of several issues for a limited number of copies for another.

2. The subscription price of a publication must be shown thereon and will be deemed nominal within the meaning of section 428 when—

(a) The publication advertises or asserts that it is furnished to subscribers at no profit, or irrespective of payment of the subscription price;

(b) When it appears from the contents or from the extrinsic inducements offered in combination with the publication that the circulation of the publication is not founded on its value as a news or literary journal, and that subscriptions are not made because of such value, but because its offers of merchandise or other consideration result, in effect, in its circulation at apparently a nominal rate.

CIRCULAR XXV.

POST-OFFICE DEPARTMENT,
OFFICE OF THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., December 16, 1905.

ABUSES OF THE SECOND-CLASS MAILING PRIVILEGE—ILLEGITIMATE
LISTS OF SUBSCRIBERS—WHAT MAY BE INCLUDED IN A LEGITIMATE
LIST—EFFECT OF PREMIUMS, GIFTS, COMBINATIONS, ETC.

The second class of mail matter is limited by law to “newspapers and other periodical publications,” and the section further prescribing the conditions under which such publications shall be admitted to that class among other things requires each to have “a legitimate list of subscribers.” The act also prohibits admission to that class of “regular publications designed primarily for advertising purposes or for free circulation or for circulation at nominal rates,” even though having a legitimate list of subscribers. The paragraph containing these provisions is as follows:

Fourth. It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: *Provided, however,* That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates. (Act of Mar. 3, 1879, ch. 180, sec. 14, 1 Supp. R. S., p. 246—sec. 428, Postal Laws and Regulations.)

In numerous ways these indispensable requirements as to a legitimate list of subscribers and this positive prohibition against advertising sheets and those sold at a nominal rate or circulated free have been evaded. The result is that publications which are not in fact newspapers or periodicals; combination advertising circulars clothed with just enough reading matter to appear to be periodicals; house organs, and others chiefly designed for advertising purposes and having no legitimate lists of subscribers, and others for which no real subscription price is asked, have secured those rates intended only for real newspapers and periodicals issued in response to an actual public demand, evidenced by the existence of a legitimate list of subscribers at subscription rates fairly indicative that the publications are sold upon their intrinsic worth as newspapers and periodicals.

The devices for evading the law as to actual subscribers and as to the prohibition against circulation free or at nominal rates are mainly:

(a) The inducement of alleged subscriptions by means of premiums, gifts, or other extraneous considerations given by the publisher to the pretended subscribers, the effect of which is that the subscription price is substantially, if not wholly, returned, the advertised price being a mere fiction.

(b) The inducement of alleged subscriptions by so-called clubbing arrangements, the effect of which is that one or more of the publications in the combination are practically given free or at a nominal rate.

(c) The inducement of alleged subscriptions actually given free upon the recipient's signing an order to the publisher alleging payment or making a promise of payment upon which there is no collection and no real intention to collect.

(d) The inducement of alleged subscriptions in connection with the sale of goods the bill for which contains an item for subscription to the publication, which item is only a part of the price of the goods, there being no actual charge for subscription.

(e) Alleged subscriptions which are themselves gifts or premiums given by the publisher to the so-called subscriber in consideration of the purchase of merchandise sold by the publisher in his other business.

(f) Alleged subscriptions of persons whose names have been secured by the publisher from the lists of defunct publications which defaulted on their subscription contracts.

(g) Alleged subscriptions based, without any order, contract, or action on the part of the addressees, upon the sending of copies of publications with a notification that failure to direct discontinuance by a fixed date will constitute such addressees subscribers.

(h) Alleged perpetual subscriptions.

(i) Alleged subscriptions for numbers of copies for their patrons or prospective patrons or other third persons by business houses, commission houses, stock exchanges, boards of trade, campaign committees, candidates for office, clubs, organizations, or individuals, interested in the circulation of the publication for advertising or other purposes.

(j) The carrying indefinitely on a pretended credit of persons who have once subscribed.

By the foregoing and other means for artificially inflating the circulation of a publication by getting it into the hands of persons free

or at a nominal rate and then counting such persons as actual subscribers, for each of whom an additional sample copy may be circulated, abuses of the second-class privilege have been created and maintained.

The object of these artificially forced circulations is nearly always to promote some general or particular advertising purpose or by the appearance of large circulation to be able to demand high prices for advertising. In all such cases the result is the advancement of private interests at the public expense, for all copies sent in the mails in fulfillment of fictitious subscriptions as well as sample copies based thereon are transported at the pound rate unlawfully and at great expense to the Government.

The positive requirements of the law must hereafter be properly observed. Manifestly, if the list of subscribers must be legitimate it must be wholly so. It is not sufficient to have some percentage of the list composed of actual subscribers. The entire list must consist of actual subscribers. The impression that form only need be observed and that substance is immaterial is erroneous.

In enforcing this requirement of law as to a legitimate list of subscribers the following will be recognized as constituting actual subscriptions:

First. Direct subscriptions to the publisher by the subscriber when paid for by him.

Second. Subscriptions to the agent of the publisher when actually paid for by the subscriber himself.

Third. Copies regularly sold by newsboys, or local agents, or news agents.

Fourth. Copies regularly sold over the publisher's counter.

Fifth. Copies sent as bona fide exchanges with other publications admitted to the second class, one copy for another.

Sixth. Individual subscriptions designed as bona fide gifts when paid for by the donors for the benefit of the recipients. Such subscriptions will be limited strictly to those coming within that definition, and will not be permitted to be used as a cover for an advertising or other purpose of the publisher or donor. Under this same rule and limitations the publisher himself may become the donor of such gift subscriptions, but in all cases the proportion of these subscriptions to the whole list will be considered and given weight in determining the legitimacy of such lists. In this latter class may be included copies sent to prove insertion of advertisements.

NOTES.

It is not required that subscriptions shall be paid in advance, but where credit is given it is expected to be in the ordinary course of business and not for the purpose of creating fictitious subscriptions or otherwise evading the requirements of the law as explained in the foregoing. Expired subscriptions may be carried when necessary for a sufficient time to enable the publisher to ascertain whether it is the intention to renew. After the expiration of such reasonable time they will no longer be recognized as actual subscriptions, and in all cases the ratio of expired subscriptions to the whole list, irrespective of the time carried, will be considered and given weight in determining the legitimacy of lists of subscribers and the primary design of the publication.

The inducement of subscriptions by premiums, gifts, service, or other extraneous considerations to subscribers, will be carefully scrutinized in respect of its effect upon the legitimacy of the list as a whole, and upon the question of the primary design of the publication.

The publisher is free to fix his own price of subscription, save only that it may not be so low as to come within the prohibitory clause of the statute. It should appear, in order not to fall within that prohibition, that there is a substantial exchange of value in respect of the newspaper or periodical itself between the publisher and the subscriber, under whatever circumstances or in whatever combination the publication is alleged to be subscribed for.

The publisher having fixed the price of his publication will be regarded, in the absence of evidence to the contrary, as having done so in good faith and according to its value. Any reduction, therefore, from such advertised price will be carefully considered in its bearing upon the question of the primary design of the publication in respect of advertising and its circulation at a nominal rate. Wherever such reduction, by whatever means brought about, is so great that the publication is sold at less than half the advertised price, it will be taken as reducing it to a nominal rate; and in cases where the subscription price as fixed by the publisher appears to be already lower than the customary or general market price for publications of the same class, any reduction from that price, by whatever means brought about, will be taken as reducing it to a nominal rate.

If premiums be used, their cost to the publisher is immaterial. Their market value to the recipient will be considered as affecting the price of the publication in proportion. The effect of the premium, gift, service, etc., may not be evaded by the device of placing no market value upon it.

In determining whether or not a publication comes within the prohibitory clause of the statute as designed primarily for advertising purposes, etc., consideration will be given, among other things, to the publisher's methods of securing alleged subscribers through third persons to whom extraordinary offers of compensation in the form of merchandise, etc., are made. Where such compensation, taken at its apparent value, effects a return to the agent of the whole or a substantial part of the subscription price paid, and it appears that the subscribers, knowing that fact, have subscribed really in order to obtain for the agent the benefit thereof, the price paid by such subscribers will be deemed to be affected to the extent of the apparent value of such compensation.

It is unlawful for a publisher or a news agent to mail, ostensibly for himself and at the rates accorded by law to him, as subscribers' copies or as alleged samples, copies of his publication purchased by and really the property of others, and sent in the mails on their behalf. A publisher is not prevented from acting for a purchaser, but the lawful rate of postage—1 cent for each 4 ounces or fraction thereof—must be paid upon all copies so sent in the mails to third persons, the same as if they were mailed by the purchaser himself.

In the case of new publications applying for admission to the second class, entry can not be granted unless the legitimate list of subscribers equals 50 per cent of the whole number of copies regularly printed and circulated by mail or otherwise; and to sustain a second-class status at least that proportion of subscribers to the whole circulation must thereafter be maintained.

It is optional with a publisher to print more than enough copies to supply actual subscribers. Copies printed in excess of the number required to supply actual subscribers may, up to an equal number, be mailed at the pound rate as sample copies to persons who are not subscribers for the purpose of getting them to subscribe or to advertise in the publication, provided each copy is plainly marked "Sample copy" on the exposed face of the publication or on its wrapper.

Postmasters must bear in mind that in the application of the foregoing the business methods of publishers are not, in themselves, subject to interference. Only when the character of a publication or its circulation, as affecting its second-class privilege, is directly in issue, is it necessary, as a matter of administration, to consider or inquire what effect, if any, upon such character results from the methods employed. In all cases it is the effect of the method, and not the method itself, which is the subject of inquiry.

Each case will be decided upon its own special facts, the foregoing circular being designed as a guide to the practical application of the statute in a uniform manner. Strict compliance in all respects with the requirements herein mentioned will not be exacted until after April 1, 1906. But while opportunity is thus to be afforded to publishers fully to adjust their publications to these requirements, this is not to be taken as excusing or condoning either flagrant abuses of the second-class privilege or such as amount to criminal violations of the law; and in every case this department reserves complete liberty of action in protecting the interests of the Government under the law.

Postmasters will at once inform all publishers of newspapers and periodicals in their respective cities of the purport of these instructions

EDWIN C. MADDEN,
Third Assistant Postmaster-General.

EXHIBIT F.

COMPLAINTS OF PUBLISHERS AS TO UNJUST DISCRIMINATION IN FAVOR
OF PUBLICATIONS PROVIDED FOR BY THE ACT OF JULY 16, 1894.

OCTOBER 26, 1908.

Hon. A. L. LAWSHE,
Third Assistant Postmaster-General,
Washington, D. C.

DEAR SIR: It is concerning the right of * * * to carry foreign advertising and be conducted as an advertising medium, when passing in the mails as second-class mail matter, whether under the provisions of the act of 1894 or those of 1879 that it is desired to enter objection; and in that regard the following information and argument is submitted in opposition to the granting of that privilege:

The * * * is published periodically by the benevolent and fraternal society known as * * *. No question is raised and no opposition is offered to the granting of the privileges of the second-class of mail matter to * * *, under the provisions of the act of 1894, as interpreted by the Assistant Attorney-General for the Post-Office Department in his opinion of January 24, 1901, and by the courts so far as they have interpreted that act.

* * * * *

Prior to the passage of the act of 1894 such publications were not considered admissible to the mails as matter of the second class. Substantially they were then, as now, bulletins of information concerning the affairs of the organizations by whom published for the information of and for distribution to the membership thereof. They lacked several essentials or qualifications for matter of the second class, but more especially a reading clientele; in other words, legitimate lists of subscribers.

Many efforts were made to influence the department to accept the lists of membership in these fraternal and benevolent organizations as constituting lists of subscribers to the publications issued by them, and otherwise to "construe" the publications themselves as meeting the requirements of the act of 1879. Generally, but not altogether, the department rightly resisted these impositions upon the law, since they would break down and in effect destroy the chief qualification for matter of the second class; namely, that of having bona fide lists of reading subscribers paying the subscription price and secured on the merits of the publications themselves as news or literary journals, independent of other considerations.

The act of 1894 made provision for the admission to the second class of a number of definite kinds of periodicals specially distinguished as of a nonpublic character, without the requirement of having legitimate lists of subscribers and without the prohibition against free circulation. Unquestionably it was the purpose of Congress in that act to give the regular periodical publications of the organizations and institutions named the privileges of the second class, although they are of a private nature and are distributed free, as distinguished from publications of a public character, attracting a paying patronage upon their merits as such. The very passage of the act of 1894 is itself plainly a confirmation of the view that Congress distinguished clearly between the publications of the different types, namely, those of public and those of nonpublic or semipublic character; and it is a confirmation of the view that Congress did not intend that all should stand upon the same plane in that classification. Under that act the department must not only require compliance in the publication itself, but compliance on the part of the publisher as well, a condition which does not obtain under the act of 1879. It takes no account of who the publisher may be.

Subsequently the periodical publications entered under the act of 1894 began the soliciting and carrying of general advertising after the manner of and in competition with those entered under the act of 1879 and complying with the provisions and restrictions of that act. The practice developed into an abuse of serious proportions; and it constituted an injustice to publishers in general and a wrong to the Government. The department then stopped the practice. Its action was based on an opinion of the Assistant Attorney-General for the Post-Office Department, to the effect that the inclusion of advertising in such publications rendered them ineligible to the second class under the act of 1894. The following are the essential paragraphs of the opinion:

Under this law, to entitle a paper to be sent through the mails at second-class rates, among other things, the matter contained therein "shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning." In reply, therefore, to your inquiry designated "first," I have to state that in my opinion a paper containing advertise-

ments in the interest of other persons or concerns than the society, order, trades union, or institution of learning which such paper represents is not entitled to the privileges of the law quoted. My opinion is strengthened by the fact that the act of Congress (March 3, 1879, 1 Supp. R. S., 246) which authorizes you to accept at second-class rates certain periodical publications having a "legitimate list of subscribers," expressly states: "That nothing herein contained shall be so construed as to prohibit the insertion in periodicals of advertisements attached permanently to the same." This proviso applies only to the act in which it was incorporated, and as Congress has not seen fit to insert a similar provision in the act of July 16, 1894, we can not place it there.

That opinion is generally accepted as a correct interpretation of the act of 1894. It supports exactly the view heretofore expressed. Practically the courts have intimated the same view. Although not ruling directly on that proposition, they have in cases involving an interpretation of that act indicated indirectly the same trend. In the case of the *Chicago Business College v. Payne*, Postmaster-General (see circular 17 submitted herewith), for instance, it was held that the institutions mentioned in that act did not include any organized for private gain. The court of appeals on review held to that opinion. It was about the same thing as the Attorney-General said, differently expressed.

Certain it is then, in all reason, that it was not the purpose of Congress to confer upon the fraternal organizations specified in the act of 1894, the right to enter the mails with their kinds of periodical publications on a plane with publishers of those provided for in the act of 1879.

The fraternal periodicals in question are simply a class or kind of bulletins issued by the members through their chosen representatives to themselves. The membership is therefore, itself, the "publisher thereof." They are originated and issued to communicate information of a private or personal nature from the authorities of the organizations, who represent the membership, to the membership, concerning their individual affairs. But for this, the essential element of their existence and prime consideration of their issuance, they would never have been brought into being and would not exist. They are not recognized by the general public as news or literary journals, because the scope, purpose, and scheme of their existence does not concern or interest the general public.

The periodical publications coming under the provisions of the act of 1879 are originated and published for the dissemination of information of a general or special public character, and they are brought into being and their existence depends upon public recognition of them as such, evidenced by lists of subscribers induced upon the merits of the publications themselves in their respective fields. In the case of the fraternal periodicals, if the membership, or a majority of it, so elects, not only the "publisher thereof," but the periodical itself would cease to exist. In other words, the publishers of fraternal periodicals themselves constituting the so-called lists of subscribers to their own periodicals, are under no contract or obligation by reason of such subscriptions, to furnish the equivalent of the subscription price to themselves, as in the case of the publisher of a periodical coming under the act of 1879. In the latter case the subscription constitutes an obligation of the publisher to a second party which must be met, and it may be enforced in law.

Publishers of fraternal periodicals, being nothing more or less than the so-called subscribers to them, do not need and do not, as a matter of fact, consider the taste or requirement of a reading clientele. The so-called legitimate lists of subscribers are the same, whether the publications be of literary value or of no literary value. The alleged subscription is compulsory, and not voluntary, as in the case of publications coming under the act of 1879. They must secure subscribers upon their merits, as they appeal to the public, regardless of the conditions or circumstances of the publishers themselves. These distinctions are so patent as to need no argument. The proviso of the act of 1894 makes the distinction clear:

Provided further, That such matter shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning, etc.

This clause clearly separates publications coming under this act from those coming under the act of 1879. The Assistant Attorney-General's opinion, previously quoted, confirms this statement, and the courts have held, as you are aware, that the privileges of the act of 1894 do not extend to publications issued as money-making enterprises. On the other hand, publications contemplated by the act of 1879 are published as money-making enterprises, and they are subject, on that account, to conditions which do not apply to those coming under the act of 1894.

When the abuse of fraternal publications, having no legitimate lists of subscribers, but carrying advertising in competition with the publications entered under and complying with that and other provisions of the act of 1879, had been corrected, the department was then induced to undo all it had accomplished, by ruling that such periodical publications, when they contained information of a general public character, might be entered as second class under the provisions of the act of 1879, the lists of membership being "construed" as legitimate lists of subscribers, under some device exhibiting the form but lacking the substance of genuine subscriptions.

This was to get around the ruling of the Assistant Attorney-General as to the carrying of foreign advertising and the disposition of the courts to the effect that the act of 1894 was not intended to confer the right of the second class upon publications issued for or operated in any manner for private gain or as money-making enterprises. This ruling permitted them to be entered under the act of 1879 and to again carry advertising in competition with journals of a general public character.

The plain intent and purpose of Congress in the Act of 1894 was thus nullified, and the intent and purpose of the law of 1879 was circumvented; and a serious wrong was done the Government and taxpayers as well as publishers in general. That ruling also set at naught the principle laid down by the court when it said in the case of *Conant v. Postmaster-General* that—

The law must not only, however, be honestly executed by the department itself, but it must be honestly and faithfully obeyed by the person who is seeking to obtain the benefits of its privileges. He can not evade it by any sort of device. He must show the utmost good faith.

This expression of the court in the light of what has been so far shown will, it is believed, seriously impress you. No comment will be necessary.

The foregoing is recited merely as a sort of history of this question. It refers to the past and is important in showing the wrongs that have been done. It furnishes also a guide for the future; and it is the future with which this petition has to do; it is the all-important consideration. * * *

APRIL 4, 1908.

Hon. A. L. LAWSHE,
*Third Assistant Postmaster-General,
 Post-Office Department, Washington, D. C.*

MY DEAR SIR: * * * A matter that I wish particularly to present to you is the following: During recent years "organization" medical journals have developed. That is, the American Medical Association has a journal called the Journal of the American Medical Association, a large weekly medical journal of large circulation and influence; many of the state medical associations have state organs; and these make up what is known as the organization medical press, consisting at present of the Journal of the American Medical Association (weekly), and about 20 organs of state medical associations, each published monthly. These organization journals have developed considerable opposition to the old-line independent medical journals, so that there is almost a schism between the two, though I have endeavored to unite all together, to work harmoniously for science and the interest of the medical profession. The American Medical Editors' Association was formed long before the organization medical press arose. Several organization medical editors are now members of it. But there is this radical difference between the subscription methods of the two classes: Each organization journal is sustained by the organization which it represents, being free to members; a certain portion of the yearly dues of each member being appropriated for the journal. So you see, an organization journal is sustained by the members of the organization; while an independent journal has to hustle for subscribers wherever it can get them, depending upon merit and enterprise for its success. Now the yearly dues of members of medical societies are usually paid at the meeting time, which may be at or near the end of the year covered by said dues. So here is a credit longer than your four months for subscriptions on monthly publications. If that is permitted, and the four months credit limitation forced upon independent medical journals, that would work an unfair discrimination against the independent medical monthlies. This is a point that I wish to have your opinion and ruling upon, in order to report it at the next meeting of our association. * * *

Very sincerely, yours,

MAY 23, 1908.

Hon. A. L. LAWSHE,
*Third Assistant Postmaster-General,
 Eleventh street and Pennsylvania avenue, Washington, D. C.*

MY DEAR SIR: Allow me to say that my interview with you and your head assistant, Mr. Bacon, in your office on May the 14th, impressed me exceedingly favorably. We hear much about corruption in politics; but I saw on that day much evidence of efficiency in pub-

lic administration. Not only efficiency, but a reasonable and tolerant spirit that does not always accompany the acts of public officials. What we want in public administration is efficiency without officiousness, and I feel that we have it in your very important office.

While my interview with you was exceedingly satisfactory, I left your office feeling that I owed a duty to you to give you some further information concerning the kind of medical publications that have arisen during recent years, collectively called the organization medical press; that is, medical journals issued by and belonging to medical associations. While I have been exceedingly busy since I left your office, preparatory to attending the editorial meeting soon to be held in Chicago, I have gotten together samples of most of these publications, which I am sending you by express, prepaid. I am sending you samples of 16 of them. There are now in existence about 22 or 23 of them—their creation has been so rapid that I have not been able to keep posted as to the exact number. The leading one, of course, is the Journal of the American Medical Association. You will find it on top of the package which I am sending you, opened at the place where terms are given, the part which will particularly interest you being marked in blue pencil and red, so you can find it without trouble. You will see that here the published terms are "\$5 for the annual dues and subscriptions to the Journal." According to the understanding of the law which I got in your office, there seems to be no question but that such a publication should carry no advertisements, or should have a separate price for the Journal, distinct from the annual dues, or such journal should not be received at the second-class rate of postage. One of these three alternatives, it seems, can not be escaped. Down a little farther in the same column you will see the notice concerning advertisements, marked with blue pencil.

Immediately beneath the top journal which I have just been describing you will find the New York State Journal of Medicine, with similar notice (though worded a little differently), marked in both blue and red. Also, the paragraph concerning advertisements on same page, marked in blue. Immediately beneath this you will find the Journal of the Michigan State Medical Society, with similar notices, marked in red and blue. Beneath this you will find the Journal of the Medical Society of New Jersey, with a similar notice, marked in red and blue. Beneath this you will find the Journal of the Indiana State Medical Association with similar notice, marked in red and blue. Beneath this you will find the Iowa Medical Journal with this notice marked in red and blue, "Free to members of the I. S. M. S." Beneath this you will find the California State Journal of Medicine, opened at an advertising page with notice concerning its value as an advertising medium. This journal has been particularly bitter, intolerant, and vindictive toward the independent medical press. Beneath this you will find the other samples, with no particular markings upon them, because it seems that in these particular issues the terms are not published in detail. But they are all issued on the same general plan, and what is true of those that I have opened out to you is true of all the rest; that is, the general plan of all these publications is for the publication to act as the organ of the society, publish its transactions, including papers read before said body, and in all other proper ways act as the organ of the society, the pay for the journal being included in the membership dues. The

same is true also of the others in existence, samples of which are not included in this package, because it has not been convenient for me to lay my hands on them recently. But, as I said before, altogether there are about 22 or 23 of them in this country, the "king bee" being the Journal of the American Medical Association—the organ of the American Medical Association, of which I am proud to be a member. The others are organs of state associations.

Please do not understand that I am trying to take an unfair advantage of my competitors in business by this demonstration to you. I do it freely and aboveboard and have no particular objection to having it known just what I am doing, for I never work in secrecy; but perhaps you will not consider it necessary or important to make known the origin of your information. The information has been open and public all these years; but your office has perhaps simply been too busy to look into the matter. I am simply aiding your office in discovering information which you will doubtless consider interesting and important. And if you are very busy on larger matters, which you usually are, allow me to suggest that you turn this matter over to your excellent chief assistant, Mr. Bacon, who seems to be pretty well acquainted with the matter already.

As I intimated to you while in your office, the organization medical journals are very active and powerful competitors of the independent medical journals, and while there has been quite an active war between some of them on each side, I have not been disposed to put on war paint, as I see that both classes have important functions to perform. And I have been simply attending to my own work in the best way that I could, and encouraging all other good work, whether it be done by the organization medical press or the independent medical press. I have no enemies to punish on the opposing side, and I claim nothing for myself except the legitimate results of honest effort. I go upon the theory that as long as my efforts deserve success, success will come. But whenever I am unable to hold up my end in a free and open field, I should go down without complaint.

The essence of the question involved is this: That in order to command the privilege of second-class rate of postage and carrying advertisements, these association journals must have a separate subscription price distinct from the annual dues. This seems to be just, for these papers ought to be put upon the basis of their merits, just like ours, and be required to demand and collect a subscription price.

Asking your pardon for this long letter, and with regards to both you and Mr. Bacon, I am,

Very sincerely,

JUNE 11, 1908.

HON. A. L. LAWSHE,

Third Assistant Postmaster-General, Washington, D. C.

MY DEAR SIR: I attended the meeting of the newspaper circulation men in the Bellevue-Stratford Hotel here yesterday and heard your excellent address. I wanted to see you for the following purpose, but I concluded that I would not take your attention while you were in the hands of so genial a crowd as the newspaper men, but would write you this instead:

When I wrote you on May 23 I did not have at hand the copy of the Postal Laws and Regulations (Form 3500) which you and Mr. Bacon

gave me when I called upon you on the 14th of May. I have since taken up this pamphlet, and refer particularly to section 429, which Mr. Bacon said referred to the matter concerning which I wrote you on May 23. Examining this section carefully (sec. 429), I can not see that it excludes advertisements from society and fraternal publications. Referring to the following section (sec. 430), I see that the publications of the state departments of agriculture shall not carry advertisements. I can not see that this particular subject is referred to in any but these two sections. It is possible, however, that there may be decisions that your Mr. Bacon had in mind when he said in your and my presence on May 14 that the medical association publications had no right to carry advertisements. I respectfully ask you and Mr. Bacon to kindly look over together these two sections (secs. 429 and 430) and let me know more about this matter—that is, if there are any decisions that uphold Mr. Bacon's theory as expressed to you and to me on May 14.

I was in high hopes that this phase of the law would give the independent medical journals an advantage to offset the very great advantage which the association medical journals now possess and by means of which they are trying to crowd the independents. But upon examination of these two sections, I am greatly disappointed. I hope that there may be decisions that are more in our favor.

Assuring you of my admiration of the manner in which you are carrying on your "campaign of education," and congratulating you you upon its magnificent success, I am,

Very sincerely, yours,

SEPTEMBER 1, 1908.

Hon. A. L. LAWSHE,

Third Assistant Postmaster-General,

Post-Office Department, Washington, D. C.

MY DEAR MR. LAWSHE: Your very cordial and courteous letter of June 25, with inclosure, was received, for which I thank you. I am inclosing herein an editorial clipped from the September issue of the Medical World, which I hope will be of deep interest to you and to Mr. Bacon. I am also sending you a marked copy of the Medical World containing this editorial, so you will have it both in complete form and the inclosed clipping. Now, does it not seem from the attitude herein shown that it is about time to move in the matter? Certain of these organization journals have shamefully and disgracefully abused the independent journals ever since they (the organization journals) came into existence. They call us "commercial," "venal," "dishonest," and various other "pet" names, with which their vocabulary seems to be well supplied. Yet a peep into their own editorial departments shows that they stoop to lower methods of commercialism than even the worst of the independent journals ever did. By their own records they show themselves to be almost wholly dependent upon their advertisers for support. I will not say more here, but refer you to the inclosed editorial for the facts.

Is it not plain that it is high time that something should be done in the matter? I would welcome a word from you upon the subject.

Very sincerely,

THE ETHICS OF ADVERTISING SOLICITING FOR MEDICAL JOURNALS.

The story that I will here present is a long one, but I will make it as short as I can. All doctors know that there are now two kinds of medical journals. This has been true since the rise of the Journal of the American Medical Association, the organ of said association, and its brood of state association journals, each one the organ of its respective state organization. These journals are collectively called "organization" journals. One of their avowed objects is to raise the standard of advertising in medical journals, and well they may, as each one has its respective organization behind it for support. The other kind of medical journals is the old kind that existed before the rise of the organization journals. These are private publishing enterprises which must depend upon merit for support; and they are called "independent" journals, because they have no organization behind them to depend upon for support. There need be no war between these two kinds of medical journals, for there is need for both kinds; there is need for the local service of an organization which its journal can give, and the profession by its patronage has shown, and is still showing, that there is need for independent journals, which can specialize in other ways than local service, and can aspire to a national circulation. Of course the Medical World belongs to the latter class—the independent journals—though it has never flaunted its "independence" in any disagreeable way.

The American Medical Editors' Association was formed many years ago—before organization journals were thought of. So, of course, its membership consisted necessarily of the editors of independent medical journals—the only kind then in existence. When the organization editors began to come into the field, the doors of membership into the American Medical Editors' Association were freely opened to them; but most of them held aloof, and some of them, notably Dr. P. M. Jones, editor of the California State Journal, and Dr. G. A. Simmons, editor of the Journal of the American Medical Association, abused the independent journals shamefully without discriminating between the good and the bad, for doing just what they themselves had been doing shortly before; that is, carrying questionable advertisements. But a few of the organization editors came into the editors' association, among them Dr. J. W. Jervey, editor of the Journal of the South Carolina Medical Association. He was heartily welcomed, and a genial gentleman we found him to be. This was at the Atlantic City meeting, in June, 1907.

A paper was presented at that meeting which, among other things, criticised Doctor Jervey's method of soliciting advertisements. An effort was made to have the writer of the paper not to read that portion of the paper, and after it was read I took the floor and expressed regret that a new member should be thus criticised, and that portion of the paper was edited out of the published transactions, as we wished to promote harmony and fraternity. It is well known that most of the organization editors are appointed from the ranks of busy practitioners, usually without previous editorial experience, the salary usually being only nominal, requiring a continuance of active practice, and the tenure of office is uncertain. It is not strange that such a man should make a mistake occasionally as an editor, and for the above reasons such mistakes should be regarded leniently.

But it transpires that the thing for which Doctor Jervey was criticised was not a mistake on his part. During a correspondence between Doctor Jervey and myself last April and May this matter was referred to. Doctor Jervey earnestly defended his course and resigned from the association. He published the correspondence in the June number of his journal. The correspondence is too voluminous to reproduce here, but what is more to the point, we will look at the original offense and to a few of the many repetitions of the same, that the profession may judge concerning the ethical tone of the same.

The following is a part of an editorial appearing in the Journal of the South Carolina Medical Association for August 21, 1906:

"It has been suggested once or twice that drug houses, instrument makers, publishers, and others seeking the patronage of the medical profession should be excluded from space for exhibiting their goods at the meetings of the state association, unless these have been, or are about to be, advertised in the Journal * * *."

In the October 21, 1906, issue, page 210, appeared the following:

"DO THIS EVERY TIME.

"If drug and chemical houses could be made to realize that the cheapest, best, quickest, and surest way of getting before the medical profession of this State is to advertise in the Journal they would all be breaking their necks to get space. The way to make them realize it, brother members, is to tell their salesmen when they

enter your offices that they need not ask you to use their preparations if they are not willing to use your journal as an advertising medium.

"Don't forget this. Tell it to every salesman coming down the pike; tell it to them over and over, until it is so beaten into their heads that they will show the houses they represent that they can not do business in South Carolina unless they can advertise in the Journal. Don't forget it."

This was severely (and justly) criticised in the paper, as above explained, but the editors' association condoned the offense, believing that the editorial was written without mature consideration, and that such a crude and unethical method of drumming up advertisements for its journal would not be continued. But it has been continued, assiduously and persistently. I will submit a few samples in proof, regretting the space that they will occupy. The following is the text of a circular which was inclosed in the November, 1907, number of the Journal of the South Carolian Medical Association:

"To the owners of this journal, the members of the South Carolina Medical Association:

"You know that reciprocity encourages business, don't you? Outside of common decency, and leaving aside mere etiquette, it's good business to stick to your friends, isn't it? Now, who is your friend—the smooth-tongued spiel artist who swears undying love and admiration for you as long as he is in your hearing and laughs behind your back at your easy gullibility and willingness to do business with him at an expense to himself of nothing more than a few lungfuls of hot air? Or is your friend the fellow who thinks enough of you to support your efforts for betterment and puts up his fair share of cash for the promotion of straightforward business intercourse with you and for the stimulation of legitimate professional business and its accompanying trade?"

"The last, you say? Certainly. There are no hopeless idiots among the owners of this journal.

"All right; so far, so good. But what are you doing for your friends who are helping you in your work? And what will you do for the pretenders who are 'working' you for their own help?"

"Read the following colloquy, which actually occurred very recently in our hearing:

"Affable salesman [entering doctor's office]. 'Doctor, I am representing the Blank & Blank laboratories, of Analaska, and I have here a very elegant preparation, of which I am going to leave you samples, of the best, positively the very best, most scientific mixture of laxative salts ever offered to your discriminating profession. This is'—"

"Doctor [interrupting]. 'Does your firm advertise in the journal of our state medical association?'"

"Salesman [with feigned pained surprise]. 'Er—no. Why do you ask?'"

"Doctor [cheerfully]. 'Oh, because there's really no reason why doctors should support a firm that is not willing and ready to support us in our efforts to better existing conditions.'"

"Salesman [affecting indignation]. 'Do you mean to tell me, sir, that simply because a firm does not advertise in your journal you refuse to consider or test its products, no matter how superior they may be—no matter how many lives they may save?'"

"Doctor [sweetly]. 'My dear man, how many firms in this country put out the best product on the market and how many of them come in here to tell me all about it? Do you suppose for a minute that I, or any other doctor, have time to try them all on their merits? Do you, now, eh?'"

"Salesman [unwillingly]. 'Well, no; I don't suppose you have.'"

"Doctor. 'Very good. Then, isn't it reasonable and proper that what testing and patronage we have to place should favor first the firms that maintain close business relations with us—our business friends?'"

"Salesman. 'Yes; I guess that's true. I am going to take this matter up with the house. What's the journal's business address?'"

"Now, the point is, that the journal needs the support of good ethical advertisers, and if every doctor who is part owner of the journal will pursue the above line of thought, speech, and action, the effect would be magical. As long as these houses think they can work us without advertising they will hold back. It is up to us, every one of us, to treat them as if they were from Missouri and show them. By doing this we are at the same time giving loyal support to those houses that are represented in our pages, which is only decent and proper. They are the ones to whom we should always give preference, and we again urge all of our joint owners to follow up this principle and always to insist distinctly when buying supplies that you wish and will have our advertisers' products—there are none better.

"We have a most wonderful and estimable concord of thought in the profession of our State. What remains to be acquired is unity of action. Are there brains and energy enough in our membership to accomplish it? We think so.

"This is practical, hard-sense talk, and we appeal to every individual member for active, intelligent cooperation. Faithfully, Your Journal."

On page 283 of the same issue appears the following:

"This journal needs money, and the way to get it is to increase the advertising patronage. We are doing this slowly as advertisers wake up to our extraordinary advantages, but it must be done faster, and this can only be accomplished through the help of all our association members. Give our advertisers preference every time in your purchases, even if the bill is not over a quarter; and flatly refuse to trade with those houses that do not patronize your own publication. Every one of you should be ashamed to give the smooth-tongued salesman the opportunity (and he chuckles over it) to say, 'Doctors are easy; we can work them all the time.'"

"Financially speaking: 'Help me, Cashsius, or I sink.'"

On page 339 of December, 1907, number occurs the following:

"Stop, look, and listen, Mr. Member of the South Carolina Medical Association.

"The association has proved its value, has it not? What have you done to help along the good work? What are you doing now to push it along? How many traveling salesmen have gone crestfallen out of your office this month because you put it up to them that their houses do not advertise in your journal? Here is the way one of the most prominent surgeons in this State put it in the past thirty days:

" 'He came into the office with a "grip" in his hand and a smile on his physiognomy. I collared him. 'Look here, Jones, I don't see your ad in our journal—get it in, or you get out.' Tickle me and I'll tickle you, and not unless. Jones promised to write the "house" to-night. Hit it again, Mr. Editor.'"

"Now, you are not all blind and deaf and dumb. Take the cue. You all have to pay taxes and licenses to do business. Why should a stranger be allowed to come in and 'work' you for a big profit without paying the tax? Get busy; and while busy, support faithfully the advertisers who are already doing business with us."

March, 1908, number, page 124:

"What are you doing to further the interests of your profession? What are you doing to help your journal? Are you doing business with our advertisers? Are you refusing to trade with those houses which refuse to do business with you through your journal? Are you letting bland and oily tongued traveling salesmen laugh at you behind your back because you let him talk you into doing business with his house, though his house declines to pay the just license tax of an advertisement in your journal? You are not hurting a house by forcing it to advertise in the Journal. You are helping it to get more business. This is easily proved by our present advertisers. Ask them. Support your journal and its advertisers, and don't fail to tell every traveling salesman who comes into your office that the way to commence to do business with the doctors of South Carolina is to make an advertising contract with your journal."

Issue for May, 1908, page 221:

"* * * We are in receipt of the following communication from a high official of the South Carolina Medical Association:

" 'Please send to———a copy of the May issue of the Journal. He represents———, and I have urged him to advertise with us. 'No advertise, no prescribe.' See? He will take it up with his house.'"

On the following page is this surprising statement:

"* * * No regular fund is turned over to the Journal from the treasury, but its expenses are paid from its advertising income, and when this runs short, the actual deficit, whatever it is, is paid out of the treasury by special order of the council * * *"

Did you ever before see such rank and unadulterated commercialism in a scientific publication? Yet Doctor Jervey calls the independent journals "commercial" journals. Some of the independent journals have been pretty rank, but I have never seen anything in the worst of them that approached the above in crude commercialism. Here is a plain application of the boycott: "No advertise, no prescribe." Let the profession look and see to what straits the South Carolina Medical Association is driven. It would better have no journal at all than one supported by the boycott. Any way, as they claim to be so noncommercial (at the same time stooping to the very depths of commercialism) why don't they pay the expenses of their journal regardless of advertising? Is it possible that the members of the South Carolina Medical Association stand for such rank commercialism and bad business ethics as the above? Let the members of other state medical associations behold with astonishment.

After the executive committee of the American Medical Editors' Association had inspected the correspondence referred to above (but too voluminous to reproduce here), and some sample editorials that I submitted with the correspondence, Doctor Jervey's resignation was accepted without hesitation. The organization editors (except a few who remain true to the regular association) have gone off and formed

an association of their own. Will they adopt the standard of commercial ethics set forth by the Journal of the South Carolina Medical Association? Will doctors who are still outside of medical associations be attracted by such ethics?

An inspection of the advertising pages of the Journal of the South Carolina Medical Association shows that if the doctors of that State confine their prescribing to the remedies therein advertised they have a very few remedies to choose from, and almost all of these few have not been indorsed by the council on pharmacy and chemistry of the American Medical Association.

From time immemorial publications of all kinds have said "When corresponding with advertisers kindly mention this journal." But it has remained for the Journal of the South Carolina Medical Association to put forth the brutal, unethical slogan, "No advertise, no prescribe." How do pharmaceutical houses of this country like a bump like this? Will they be forced into any publication by such tactics? Can not Dr. P. M. Jones, of California, pour out an anathema upon such journalistic ethics?

In the July issue of the South Carolina Journal the editor intimates that there is not an independent medical journal but that would cease publication if it were not for the advertisements. He can revise his statement by excepting one, at least—The Medical World. Our income from subscriptions is considerably greater than from advertising; and we could and would continue publication profitably if all advertisements were withdrawn. We know that, for we keep an accurate account of everything. In the first place, a withdrawal of our advertisements would decrease our expenses almost one-half; and it wouldn't decrease our income one-half. The cost of publishing a journal of over 30,000 copies is very great; and advertisers are not willing to pay what the space is really worth. The membership of the South Carolina Medical Association is about 800; and the cost of printing a journal of so small an edition is a trifle compared to the former, and the advertising rates are much higher in proportion; this, perhaps, is the reason that advertising patronage is so important to the smaller journals, but the advertisers fail to realize that they pay a much higher "freight" than in the journals of large circulation. However, a journal without advertisements would be an anomaly; a journal with well-selected advertisements is a better journal than it would be without them—more attractive to its readers. But advertisers would do well to shun journals that depend on advertisements for their entire support.

One of the youngest and one of the very best organization journals is the Journal of the Indiana State Medical Association, edited by Dr. A. E. Bulson, of Fort Wayne, Ind., a high-class man, excellent physician, and able editor. But we see here, also, that hunger for advertising which is supposed to afflict only weak and low-class publications. I clip the following from page 247 of the June issue of the Indiana Journal:

"Read the advertising pages of the Journal and then make it a point to patronize the advertisers whenever you can consistently do so. An occasional letter to the advertisers, saying that you are patronizing them and that you appreciate the fact that they are advertising in the Journal, will go a long way toward making them feel that their money spent with us is bringing returns. This means something to you in the way of securing a larger and better journal."

There is nothing bulldozing or boycottish about this, but high-class independent journals do not permit anything of this kind in their editorial pages. On page 249 of the same issue of the Indiana Journal occurs the following—still right in the midst of the editorials:

"* * * Of course, a large part of the expense of publication is met by the income from advertising, and without this income the Journal would be a small and comparatively insignificant periodical. Members of the association should bear this in mind when we plead for the support of the advertising pages, for it means much for the success of the Journal * * *."

It seems that the organization journals are counting much more on revenue from advertisements than independent journals in good standing usually do. My theory has always been that a publication should be made for its readers primarily, and conducted in their interest; and that advertising should be only incidental to this. The Medical World is conducted in accordance with that theory, and the large support from subscribers proves the success of the same.

Another indication of advertising hunger among the organization journals is the following, clipped from page 157 of the May issue of the California State Journal of Medicine:

"* * * We have secured an advertising agent in New York and another in Chicago, both of whom are acting for some fifteen state association journals, and in due course we may expect to receive some new business from these sources; in fact, about two pages of advertising have been thus secured."

In the old days when medical societies published annual transactions the members paid for them; can't they pay for their organization journals, and not try to shift the entire load to the good-natured advertiser? At any rate, as they claim to lead in high-class medical periodical literature (they ought to, with the strength and influence of the associations behind them), should they not quit this undignified crying, in their editorial columns, for advertising patronage? I have never seen so much bold, unmasked commercialism in medical editorials as I have seen during the last year or two in the organization medical press (the above being only a few samples); yet the editors of some of these papers, notably of the South Carolina, California, and Kentucky journals, refer to the independent journals in insulting terms. It is time for the "worm to turn" and show the venality and hypocrisy of the most blatant of these. It is a long story. The above is only a few scraps taken here and there.

However, I take great pleasure in saying that most of the organization journals are ably conducted and high class, and they occupy a very useful field when they attend strictly to their own business and show us how well they can attend to it. As to advertisements, the Indiana Journal, the same issue as quoted from above (June), page 249, says:

"* * * Please remember also that out of about 20 state association journals there are only 3 that have clean advertising pages * * *."

These three I suppose are the Indiana Journal, the Pennsylvania Journal, and the Illinois Journal. These three line up to the official standard of advertising only remedies that have been reported upon favorably by the council of pharmacy and chemistry of the American Medical Association. Official journals ought to line up to the official standard, and not make so much fuss about it; but the above statement of one of their own number is certainly not a flattering one. I have before me a lot of "official" journals carrying all kinds of advertisements. I could fill many pages with the details, but this editorial is far too long now, so I will desist, with the exhortation that members of medical societies demand that their official journals be more consistent and less commercial.

DEPENDENT ABSOLUTELY ON ADVERTISING INCOME.

In connection with the above, the following will be of interest: When the Journal of the Indiana State Medical Association came into existence some months ago (last January was the exact date, I think), Dr. A. E. Bulson, of Fort Wayne, Ind., became its "editor and manager." At the same time Doctor Bulson's own journal, the Fort Wayne Medical Journal-Magazine, an "independent" journal, was dropped—that is, it was discontinued—dropped out of existence.

On the night of June 1 last, while the American Medical Editors' Association was holding its regular annual banquet, the organization editors were not there, but were having a little side show of their own. What if a few of the most ultra organization men of your county society should ignore the regular organization and start a separate society of their own, and hold meetings at the same time as the regular organization? Would you consider them good organization men?

This meeting of organization editors (and state secretaries) is reported in the Journal of the American Medical Association for July 11, pages 145-146. I clip from page 146 the following sentence from Doctor Bulson's speech as there reported:

"He said that he had edited for a number of years a journal which was dependent absolutely on its advertising income, but that he had always endeavored to keep the reading pages free from advertising."

This throws a powerful light upon "things as they were," but as they should not have been. Just think. A medical journal published for years, "dependent absolutely on its advertising income." Stop and think about such a condition. It was certainly high time that such a journal should be discontinued, and if any more are in existence they should be discontinued at once. What must advertisers think of such a revelation? The new postal regulation should have come years ago. The above condition was never true of the Medical World, and I am sorry to know that it was ever true of any medical journal, particularly one published by so good a man as Doctor Bulson, for he never prostituted his reading pages to commercial uses, but I can't understand why he had no subscription income, and why he continued a publication with no subscription income, for the test as to whether a journal is needed or not should be determined by paid subscriptions; this should be first, and the advertising should be incidental to this. The profession should decide, by its patronage, whether or not a publication is needed. If, according to this test, it is not needed, it should not be bolstered up by advertising, and advertisers should not be willing to patronize a journal that will not give a detailed statement of its number of actual subscribers. The Medical World has been giving such a detailed statement to its advertisers nearly every month for years.

Proper and honorable commercialism is all right in its place; but its place is not in the editorial department of a medical journal, particularly of medical journals that are the official and supposedly dignified organs of great and honorable medical associations. So I again exhort the members of the South Carolina State Medical Association to protest against coarse and brutal commercialism, partaking of the features of the boycott, appearing in their official organ, and I exhort the members of certain other state associations to demand that their official organs shall be kept up to the high and noncommercial standard of the best of these organs, which is high—say up to the Pennsylvania standard or the Illinois standard. And members of state societies should insist that their official organ shall not have to depend wholly nor chiefly upon advertising for its running expenses. This is worse than for a so-called “independent” journal to be “dependent absolutely on its advertising income.” Doctors are able to pay for their journals, whether they be official organs of their societies or independent publications; and publications of either kind that are not thus paid for deserve to be suppressed, and advertisers could do it by withdrawing the “prop,” and the Post-Office Department could do it by applying the new regulations. I hope they will both “get busy,” for the profession will lose nothing by losing what its patronage does not call into existence nor justify, and advertisers would gain by not having to prop up publications not sustained by the patronage of the profession.

DEFINITE FIGURES.

By the definite figures officially given below it will be seen that the Journal of the Indiana State Medical Association depends chiefly upon its advertising income for its existence. The Indiana State Medical Association met June 18 and 19, 1908, at French Lick, Ind. At this meeting the councilors made a report to the house of delegates; this report is published in the July issue of the Journal, from which I clip the following (p. 292):

“* * * The cost of publishing the Journal in its present form and size for one year will be approximately \$5,000, not counting any salary for the editors. Of this amount about \$1,800 is received from the association in subscriptions and the balance must be secured from advertising. Remuneration for the editors’ services is to be paid from any surplus at the close of the year.”

Here we have definite figures showing to what extent that particular official journal is dependent upon advertising patronage for its existence. How about other official journals? If they show dependence to a similar extent upon advertising for their existence, shall we not call them the “dependent” journals? Would it not be much better that the members of the medical associations pay at least the actual cost of their official journals?

Later: In the August number of the California State Journal of Medicine, page 256, the South Carolina Journal matter is fully indorsed, and the members of the California Medical Association are urged to do the same thing “and stick to it.” Thus the South Carolina Journal does not stand alone in the above-illustrated methods and ethics of obtaining advertisements. Others not so mild mannered as the writer of these lines would apply very ugly words to these methods and ethics. I will leave this for others to do if they wish.

The California Journal editorial above referred to is too scurrilous and insulting to quote. It seems to me that the members of medical associations would demand that their journals be conducted at least in a gentlemanly manner.

[Editorial in Texas Medical Journal, March number, 1910.]

MEDICAL ASSOCIATION JOURNALS AND THE POSTAL LAWS.

THIRTEEN HUNDRED TONS OF FREE MEDICAL JOURNALS SENT ANNUALLY THROUGH THE MAILS AT SECOND-CLASS RATES, IN VIOLATION OF THE LAW—AN IMPORTANT FACTOR IN THAT \$17,000,000 DEFICIT.

It is not generally known that the Journal of the American Medical Association and most of the state medical association journals, including Texas, are, and for many years have been, violating the postal laws in two essential particulars; but such is a fact. In an official letter from the Acting Third Assistant Postmaster-General, addressed to a party in South Carolina in reply to inquiries, a copy

of which letter is before me, he holds that members of an association who receive the association's journal in consideration of the payment of membership fees or annual dues are not bona fide subscribers, as prescribed by the department as a condition precedent to the privilege of second-class mailing rates, and that such journals shall not carry advertisements other than those that relate strictly to the affairs of the association and the purposes of such organization.

The second-class mailing privilege (1 cent per pound) having been obtained by the representation that these medical publications have a large bona fide subscription list, this savors of misrepresentation and (unintentional) fraud, and it may constitute grounds for action at law, and certainly warrant for the withdrawal of the privilege of second-class mail. A subscriber is one who orders and pays for a journal, at his discretion, and not a member who has it sent to him in consideration of the payment of dues.

This is a very serious matter, and I call the attention of our trustees to it. The Journal of the American Medical Association has caught on—or been caught up with—and is hedging, as I pointed out in last issue, by separating the subscription to the journal from the membership fee, the latter being now announced as \$1 a year, and the subscription to the journal—discretionary—at \$4. This must be done by our own association at the Dallas meeting in May, and I shall introduce a resolution to that effect.

The American Medical Association journal has also been brought to see that all these years it has been carrying advertisements not allowed by the postal laws—automobile advertisements and such like—and has doubtless caused to be introduced in Congress a bill to legalize the carrying of such advertisements. At any rate, Mr. Dodds has introduced such a bill (House bill 17543, by Dodds, January 10, 1910), and the Journal of the American Medical Association doubtless inspired it. The cap that fits the "octopus" fits also its tentacles—the state association journals.

The Acting Third Assistant Postmaster-General, after quoting in full the postal laws bearing upon the subject and giving the opinion of the Attorney-General of the United States in support of his position and construction, comments as follows:

In all cases it must appear that it is left to the option of the member whether he will subscribe or not. The subscription must not be forced or made obligatory upon him.

This law unquestionably contemplates that there shall be as a prerequisite to such entry a public demand for the publication on its merits evidenced by a list of subscribers who desire it and pay for it.

Many fraternal orders and other similar organizations provide by resolution or by-law that a certain portion of each member's dues, or per capita tax, etc., shall be set aside for the payment of his subscription to some paper which is published by the society or adopted as its official organ.

At first sight it might appear that a list of such members should be recognized as a "legitimate list of subscribers," but upon a careful consideration of this method of securing a subscription list it is found to be a meeting of the requirements of the act in form rather than in substance, as it is usually the fact that the price of membership, or the amount of dues payable, is the same, whether the members desire the publication or not; that is to say, it is not left to the option of a member to receive the publication or not, as he sees fit, and to have his dues increased or decreased accordingly.

In the last analysis, therefore, the publication is virtually thrown in free as a concomitant of membership, the expense of publishing and circulating the paper merely being paid out of dues accruing from membership in the society. The effect of all this is that the members, being the society, publish a paper and furnish it to themselves free. The society is therefore in reality both the publisher and subscriber. Viewed in this

light, not only does the paper not have a "legitimate list of subscribers," but is literally circulated free, and therefore comes clearly within the prohibition of the statute.

The department has uniformly held that publications containing advertisements in the interests of other persons or concerns than the society or trades union or institution of learning which the paper represents are not entitled to the privileges of that act.

Considering, therefore, that Congress undoubtedly intended to extend the second-class mailing privileges to certain publications under the conditions above set forth, it is clear that if these publications are to enjoy the second-class mailing privileges under an act other than the one specially designed for them, the requirements of the alternative act should be fully met. They certainly can not enjoy the privileges of both acts without the restrictions of either. In this connection two observations may be made:

1. It is a fact disclosed by answers to many inquiries that but few of the organizations whose publications are entered under the act of March 3, 1879, and having the "list of subscribers" based on a by-law or resolution providing for setting aside a portion of the members' dues, are actually abiding by the resolution, but, on the contrary, the moneys paid on account of alleged subscriptions enter into the general funds of the organization and the cost of printing and circulating the publication is merely paid therefrom.

2. It is manifestly an injustice to publishers competing in the same or a similar field and having papers which would be patronized by the members of an organization to to be compelled to secure and maintain a list of subscribers based on the drawing power of the paper as such, whereas the competing organization papers' list of subscribers is composed of members who were drafted in under a by-law of the organization and receive the paper as one of the benefits of membership, and not on account of voluntary subscription. Publishers of other papers have entered complaint asserting that people will not pay for that which they can receive free. Consequently, those receiving a paper through the medium of membership in a society are not disposed to pay for some other paper in the same field.

* * * * *

President Taft calls the attention of Congress to the statement of the Postmaster-General that the second-class mail falls short \$17,500,000 of paying expenses. The Third Assistant Postmaster-General recommends very drastic measures to be applied to the small medical and other journals, such as limiting sample copies to 10 per cent of issue, and refusing mail to copies sent to all subscribers who do not renew and prepay their subscriptions within four months after expiration of same. And yet he permits tons upon tons of medical journals to be sent at second-class rates, in violation of the law as interpreted by himself backed by the opinion of the Attorney-General of the United States. For twenty-five years and more the Journal of the American Medical Association has been sending copies to its members in consideration of payment of their dues, and carrying advertisements outlawed by said opinion. In 23 States the Medical Association issues a monthly journal which is sent free to its members in violation of the law as pointed out above. The Journal of the American Medical Association sends 50,000 copies each week, averaging, say, half a pound. That is, 52 weeks in a year, equals 2,600,000 copies, or 650 tons of mail that should pay postage. It is safe to estimate the output of the 23 state journals at about the same. This would make 1,300 tons a year. The Dodds bill, if passed, would legalize and make permanent this burden on the mail as to the advertisements. The Third Assistant Postmaster-General has, in effect, put up the bars against the pigs, and left ten panels of fence down for the hogs and cattle. To give the state and national journals such advantage over the journals having a paid subscription list is a discrimination ruinous to the smaller publications, for as the Postmaster-General says, "a man will not pay for that which he gets free." It is tantamount to a combination in restraint of trade,

inasmuch as it creates a monopoly for the favored journals, and destroys competition and destroys the independent journals. The Texas Medical Journal, now in the twenty-fifth year of sustained patronage and usefulness, protests against such an unjust discrimination.

EXHIBIT G.

EXTRACT FROM ANNUAL REPORT OF THE POST-OFFICE DEPARTMENT
FOR THE YEAR ENDED JUNE 30, 1909 (PP. 315-316), ENTITLED
"SUBSCRIPTIONS BY FRATERNAL ORDERS, SOCIETIES," ETC.

The department has found it somewhat difficult to correctly construe and uniformly apply the act of March 3, 1879, where the subscriptions of members of fraternal orders, societies, etc., to the newspaper or periodical published by or adopted as the organ of their respective bodies are paid in connection with their dues thereto, such organizations either not being so constituted as to be entitled to the benefits of the act of July 16, 1894, or, if entitled to the privileges of that act, preferring the benefits of the organic act of March 3, 1879.

Publications entitled to the second-class mail privilege under the act of March 3, 1879, are limited to "newspapers and other periodical publications originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers," and those are prohibited which are "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

A careful inquiry into the purpose of this statute shows that Congress, in the interest of the public, intended to give second-class postage rates to those publications only for which there is a popular demand, evidenced by a bona fide list of subscribers. From the broad range of printed matter covered by these five subjects, favored with but nominal postage charges, it was designed to leave each individual to his own option as to the periodical for which he should subscribe, or not to subscribe for any if he should so elect. It is simply the ordinary operation of the economic law of supply and demand.

The members of these organizations have a full and unquestioned right to subscribe for whatever periodical they may choose, and this department neither has nor assumes any right to interfere therewith, but may incidentally make inquiry as to the character of such subscriptions in its effort to determine whether a publication has a lawful subscription list or is designed primarily for advertising purposes or for free circulation.

The constitution or by-laws of such orders and societies may provide for the publication or adoption of a newspaper or periodical as their organ, but they can not force the same upon their members as a condition of membership where there is no desire for the publication.

To meet these conditions, as well as to do justice to that class of publishers who must compete with fraternal and society organs, the department now declines to consider as a part of a legitimate sub-

scription list such subscriptions as are made in connection with the payment of dues, unless it is made plain to the member that he is given the opportunity to say whether he desires such publication, and in the event of his not desiring it sufficiently to pay therefor, his dues will be diminished by the amount of the subscription price of the publication.

In pursuing this policy no drastic or harsh measures are employed. The steady effort of the department is to administer the law with firmness, but in justice and with leniency in deserving cases. Where such a publication has already been admitted and has been cited for apparent lapses, it is given a reasonable opportunity to take the proper corrective steps and bring about right conditions under the law, and there is never a revocation of an authorization until this opportunity has been disregarded and the required correction has gone by default. If a new publication seeks admission but appears not to conform to the requirements of the statute, and the publisher shows a disposition to meet such demands, all reasonable instruction and indulgence are extended, to the end that loss of time and money and embarrassment may be spared the publisher. The policy of the department is not to keep out publications, but uniformly to insist that they seek and obtain admission through the channels prescribed by law and not according to organization schemes which are in conflict with the purpose of Congress in conferring the benefits of the second-class mail privilege.

EXHIBIT H.

LETTER ADDRESSED TO THE HON. A. F. LEVER, M. C., CONTAINING A DISCUSSION OF THE POLICY OF THE POST-OFFICE DEPARTMENT REGARDING FRATERNAL AND OTHER PUBLICATIONS ISSUED BY SOCIETIES ENTERED, OR FOR WHICH ENTRY IS SOUGHT, UNDER THE ACT OF MARCH 3, 1879.

NOVEMBER 19, 1909.

Hon. A. F. LEVER,
Lexington, S. C.

DEAR SIR: Receipt is acknowledged of your communication of the 12th instant, relative to the pending application for admission of the South Carolina Pythian to the second class of mail matter at Columbia, S. C. In view of your statement, it is deemed proper to explain the attitude of the department with reference to subscription lists made up of members of fraternal and other societies who receive the publication on account of their membership and the payment of dues.

There are three laws under which a publication is entitled to transmission as second-class matter, namely, the acts of March 3, 1879, July 16, 1894, and of June 6, 1900. This statement has to deal only with the first two of these, and the administrative practices of the department thereunder.

The provisions of the act of March 3, 1879, in respect of second-class matter are as follows:

SEC. 10. Mailable matter of the second class shall embrace all newspapers and other periodical publications which are issued at stated intervals, and as frequently as four times a year and are within the conditions named in sections twelve and fourteen.

SEC. 12. Matter of the second class may be examined at the office of mailing, and if found to contain matter which is subject to a higher rate of postage, such matter shall be charged with postage at the rate to which the inclosed matter is subject: *Provided*, That nothing herein contained shall be so construed as to prohibit the insertion in periodicals of advertisements attached permanently to the same.

SEC. 14. The conditions upon which a publication shall be admitted to the second class are as follows:

First. It must regularly be issued at stated intervals, as frequently as four times a year, and bear a date of issue, and be numbered consecutively.

Second. It must be issued from a known office of publication.

Third. It must be formed of printed paper sheets, without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications.

Fourth. It must be originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers: *Provided, however*, That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.

The act of July 16, 1894, reads as follows:

All periodical publications issued from a known place of publication at stated intervals and as frequently as four times a year, by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons, or by a regularly incorporated institution of learning, or by or under the auspices of a trades union, and all publications of strictly professional, literary, historical, or scientific societies, including the bulletins issued by state boards of health, shall be admitted to the mails as second-class matter and the postage thereon shall be the same as on other second-class matter and no more: *Provided further*, That such matter shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning, and shall be formed of printed paper sheets without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications.

From the foregoing it will be seen that the entry of publications as second-class mail matter under the act of March 3, 1879, is limited to "newspapers and other periodical publications originated and published for the dissemination of information of a public character, or devoted to literature, the sciences, arts, or some special industry, and having a legitimate list of subscribers," and prohibits the admission of those "designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates."

This law unquestionably contemplates that there shall be, as a prerequisite to such entry, a public demand for the publication on its merits, evidenced by a list of subscribers who desire it and pay for it.

Many fraternal orders and other similar organizations provide by resolution or by-law that a certain portion of each member's dues, or per capita tax, etc., shall be set aside for the payment of his subscription to some paper which is published by the society or adopted as its official organ.

At first sight it might appear that a list of such members should be recognized as a "legitimate list of subscribers," but upon a careful consideration of this method of securing a subscription list, it is found to be a meeting of the requirements of the act in form rather than in substance, as it is usually the fact that the price of membership, or the amount of dues payable is the same, whether the members desire the publication or not; that is to say, it is not left to the option of a member to receive the publication or not, as he sees fit, and to have his dues increased or decreased accordingly.

In the last analysis, therefore, the publication is virtually thrown in free as a concomitant of membership, the expense of publishing

and circulating the paper merely being paid out of dues accruing from membership in the society. The effect of all this is that the members, being the society, publish a paper and furnish it to themselves free. The society is therefore in reality both the publisher and subscriber. Viewed in this light not only does the paper not have a "legitimate list of subscribers," but is literally circulated free, and therefore comes clearly within the prohibition of the statute.

The records of the department show that the view that a publication issued under the conditions above set forth did not meet the requirements of the act of March 3, 1879, prevailed prior to 1894, when, in order to give relief to the many meritorious fraternal and educational publications, the second-class mailing privilege was conditionally extended by the act of July 16, 1894, to the following classes of publications:

(1) Those issued by or under the auspices of a benevolent or fraternal society, organized under the lodge system, and having a thousand members.

(2) By a regularly incorporated institution of learning.

(3) By or under the auspices of a trades union.

(4) By strictly professional, literary, historical, or scientific societies.

(5) Bulletins issued by state boards of health.

This law does not require a "legitimate list of subscribers," and does not prohibit the admission of the second class of mail matter of a publication circulated free or for advertising purposes. But the privilege was restricted to publications "originated and published to further the objects and purposes of such society, order, trades union, or institution of learning."

Under this provision the Assistant Attorney-General for the Post-Office Department rendered the following opinion:

I have before me your letters dated November 30, 1900, and December 7, 1900, with which you submitted a number of specimen periodicals, and ask "to have a settlement of the following questions," viz:

First, the right of a publisher, under the "educational" act, to insert any advertising not pertaining strictly and immediately to the propagation of learning in its technical sense, as inculcating a knowledge of those branches of education which cultivate and enlarge the mind, as distinct from the sale of school furniture or any other article.

* * * * *

Under this law, to entitle a paper to be sent through the mails at second-class rates, among other things, the matter contained therein "shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning." In reply, therefore, to your inquiry designated "First," I have to state that, in my opinion, a paper containing advertisements in the interest of other persons or concerns than the society, order, trades union, or institution of learning which such paper represents is not entitled to the privileges of the law quoted. My opinion is strengthened by the fact that the act of Congress (Mar. 3, 1879, 1 Supp. R. S., 246) which authorizes you to accept at second-class rates certain periodical publications having a "legitimate list of subscribers" expressly states: "That nothing herein contained shall be so construed as to prohibit the insertion in periodicals of advertisements attached permanently to the same."

This proviso applies only to the act in which it was incorporated, and as Congress has not seen fit to insert a similar provision in the act of July 16, 1894, we can not place it there.

* * * * *

Accordingly, the department has uniformly held that publications containing advertisements in the interests of other persons or concerns than the society or trades union or institution of learning which the paper represents are not entitled to the privileges of that act.

Considering, therefore, that Congress undoubtedly intended to extend the second-class mailing privileges to certain publications under the conditions above set forth, it is clear that if these publications are to enjoy the second-class mailing privileges under an act other than the one specially designed for them the requirements of the alternative act should be fully met. They certainly can not enjoy the privileges of both acts without the restrictions of either. In this connection two observations may be made:

1. It is a fact disclosed by answers to many inquiries that but few of the organizations whose publications are entered under the act of March 3, 1879, and having the "list of subscribers" based on a by-law or resolution providing for setting aside a portion of the members' dues, are actually abiding by the resolution, but, on the contrary, the moneys paid on account of alleged subscriptions enter into the general funds of the organization, and the cost of printing and circulating the publication is merely paid therefrom.

2. It is manifestly an injustice to publishers competing in the same or similar field and having papers which would be patronized by the members of an organization to be compelled to secure and maintain a list of subscribers based on the drawing power of the paper as such, whereas the competing organization paper's list of subscribers is composed of members who were drafted in under a by-law of the organization and receive the paper as one of the benefits of membership and not on account of voluntary subscription. Publishers of other papers have entered complaints asserting that people will not pay for that which they can receive free. Consequently, those receiving a paper through the medium of membership in a society are not disposed to pay for some other paper in the same field.

The following methods of circulating publications to members of societies, while they appear to meet the requirements of the law in form, are not regarded as meeting the law in fact:

(1) Where so-called subscriptions of members are paid by deducting the subscription price from the membership fees or dues under a provision of the constitution or by-laws of the organization to the effect that such part of each member's dues or fees is set aside to pay his subscription.

(2) Where the subscription takes the form of a definite statement over the member's signature when transmitting his fees or dues, that a stated portion shall be used for the purpose of paying his subscription.

(3) Where subscriptions of members of societies, etc., are paid from funds contributed by the members and such funds belong to the society.

(4) Where subscriptions by members of societies, etc., are made obligatory upon such members by the constitution or by-laws of the society.

However, so far as subscriptions of members of societies are concerned, the following are regarded as meeting the requirements of the law:

(1) Members subscribing to the publisher direct and paying therefor independently of any dues or fees of a society.

(2) Members subscribing through the officers of societies and paying therefor independently of any dues or fees of the societies.

(3) Where the constitution and by-laws make special provision for the payment of dues with and without a subscription to the publication, provided the dues without the publication are an amount materially less than the dues with the publication.

In all cases it must appear that it is left to the option of the member whether he will subscribe or not. The subscription must not be forced or made obligatory upon him.

In the enforcement of this policy, no drastic or harsh measures are employed. The steady effort of the department is to administer the law with firmness, but in justice, and with leniency in deserving cases. Where such a publication has already been admitted, and has been cited for apparent lapses, it is given a reasonable opportunity to take the proper corrective steps and bring about right conditions under the law, and there is never a revocation of an authorization until this opportunity has been disregarded and the required correction has gone by default. If a new publication seeks admission but appears not to conform to the requirements of the statute, and the publisher shows a disposition to meet such demands, all reasonable instruction and indulgence are extended to the end that loss of time and money and embarrassment may be spared the publisher. The policy of the department is not to keep out publications, but uniformly to insist that they seek and obtain admission through the channels prescribed by law and not according to individual caprices or organization schemes which are in conflict with the purpose of Congress in conferring the benefits of the second-class mail privilege.

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I shall be glad to consult with you personally in reference to this case, as suggested by you, upon your return to Washington.

Respectfully,

A. M. TRAVERS,
Acting Third Assistant Postmaster-General.

EXHIBIT I.

Correspondence with Mr. S. D. Williams, president the National Fraternal Press Association, relative to (1) the carrying of commercial advertisements in publications entered under the act of 1894; (2) the carrying of stories, serials, and household or fashion departments in such publications.

NATIONAL FRATERNAL PRESS ASSOCIATION,
SECTION OF NATIONAL FRATERNAL CONGRESS,
OFFICE OF THE PRESIDENT,
Detroit, Mich., January 29, 1909.

Hon. A. L. LAWSHE,

Third Assistant Postmaster-General, Washington, D. C.

DEAR SIR: The managers of some of the fraternal publications who desire to keep within the provisions of law governing their publication and distribution have asked me what the ruling of the Post-Office Department was in the recent case of the *Modern Woodman*. Not knowing, myself, I am asking you to kindly give me your ruling in the matter. As I understand it you ruled that that journal could

not carry commercial advertising in its columns; and, second, that it could not publish stories or serials or a household or fashion department or any other matter not directly pertaining to the work or interest of the order. I will greatly appreciate and thank you for any information you may give me on the matter.

Thanking you in advance for your favor I remain,

Yours, very truly,

S. D. WILLIAMS.

FEBRUARY 3, 1909.

Mr. S. D. WILLIAMS, *President,*
The National Fraternal Press Association,
302 Whitney Building, Detroit, Mich.

DEAR SIR: In reply to your letter of the 29th ultimo, asking to be informed of the ruling of the Post-Office Department in the recent case of *The Modern Woodman*, you are informed that the facts in this case that came to the attention of the department were that there was not for this publication a "legitimate list of subscribers" as required by the law (act of March 3, 1879), under which admission of the publication to the second class of mail matter was sought at Rock Island, Ill., and it further appeared that the paper, by reason of its methods of circulation, came within the following prohibition of the statute:

Provided, however, That nothing herein contained shall be so construed as to admit to the second-class rate regular publications designed primarily for advertising purposes, or for free circulation, or for circulation at nominal rates.

A hearing was accorded the publishers in the matter, and subsequent thereto they filed an application for admission of the publication under the act of July 16, 1894 (see sec. 429, p. 7 of the inclosed pamphlet), which makes special provision for admission to the second class of mail matter of publications issued by or under the auspices of benevolent or fraternal societies, etc., and which are originated and published to further the objects and purposes of such society. This act does not require that a publication to be admissible thereunder have a "legitimate list of subscribers."

In regard to the carrying of advertisements in publications entered as second-class matter under the act of July 16, 1894, you are informed that in an opinion rendered by the Assistant Attorney-General for the Post-Office Department under date of January 24, 1901, it was held that advertisements in the interest of other persons or concerns than the society, etc., publishing the paper are not permissible in a publication entered as second-class matter under the above-mentioned act.

As to the statement that a ruling was made in *The Modern Woodman* case that it "could not publish stories or serials or a household or fashion department or any other matter not directly pertaining to the work or interest of the order," you are informed that the information you have obtained is entirely erroneous and this question was not passed upon in the case in question.

Respectfully,

Third Assistant Postmaster-General.

EXHIBIT J.

CORRESPONDENCE WITH MR. S. D. WILLIAMS, PRESIDENT THE NATIONAL FRATERNAL PRESS ASSOCIATION, AND MR. CLINTON C. HOLLENBACK, SECRETARY-TREASURER THE NATIONAL FRATERNAL PRESS ASSOCIATION, RELATIVE TO THE ENTRY OF FRATERNAL PUBLICATIONS AS SECOND-CLASS MATTER.

NATIONAL FRATERNAL PRESS ASSOCIATION,
SECTION OF THE NATIONAL FRATERNAL CONGRESS,
OFFICE OF THE PRESIDENT,
Detroit, Mich., June 10, 1909.

Hon. A. L. LAWSHE,
Third Assistant Postmaster-General,
Washington, D. C.

DEAR SIR: Since your ruling in the case of The Modern Woodman I have been asked by the publishers of many fraternal papers what the effect of the ruling was on fraternal publications entered in the mails under the law of 1879 and previous to the enactment of the law of 1894, which have never changed their places of entry or sought admission to the mails at any other office than the original one.

There are many publications such as the Sovereign Visitor, the official organ of the Woodmen of the World; the Bee Hive, which is the official organ of the Knights of the Maccabees of the World, and the Modern Maccabee, the official organ of the Knights of the Modern Maccabees, which were entered several years before the act of 1894 was passed. What I would like to know is: Have these papers mentioned the right to carry advertising in their columns? I understand that their methods of circulation and their subscriptions are the same in character as that of The Modern Woodman.

The publishers of these papers have all expressed a desire to keep wholly within the limitations of the law, and you would greatly oblige me if you would kindly answer the above inquiries.

Thanking you in advance for your favor, I remain,

Yours, very truly,

S. D. WILLIAMS.

JUNE 21, 1909.

Mr. S. D. WILLIAMS,
President the National Fraternal Press
Association, Detroit, Mich.

DEAR SIR: I have before me your letter of the 10th instant, in reference to fraternal publications entered under the act of March 3, 1879, circulated in a manner similar to that of the Modern Woodman, and asking if they may continue to carry advertisements. In reply I beg to advise you that such of those publications as are circulated as is the Modern Woodman are not properly entered under the act of March 3, 1879. As such cases come to attention the department is giving each consideration with the object of bringing them within the requirements of the law under which entry should be granted.

I note your statement that the publishers of the publications mentioned by you have expressed a desire to keep wholly within the requirements of the law, and I would be pleased to be advised if the

publishers referred to, whose publications are now entered under the act of March 3, 1879, but which by reason of their method of circulation properly come within the provisions of the act of July 16, 1894, as is the *Modern Woodman*, will voluntarily take the necessary action to bring their publications fully within the law in order that such action may not be initiated by this office. In the event that any of these publishers so desire, the requirement of deposits pending action on the application for readmission of the publications under the act of July 16, 1894, will be waived upon request.

With reference to any advertisements in the interest of other persons or concerns than the institution represented by the paper that may now be carried in such publications, it is deemed proper to state that it is not the desire of the department to embarrass publishers by requiring the immediate elimination thereof, but a reasonable time will be given in individual cases within which their existing contracts may be carried out.

In this connection I beg to hand you a copy of the letter addressed to C. C. Hollenback, secretary-treasurer of your organization, in which the attitude of the department relative to fraternal publications is fully set forth. Although the views of Mr. Hollenback were requested on this subject, I have heard nothing from him in answer to this communication, and I take this opportunity of stating that I shall be glad to discuss this matter with you or any other representative of your association.

Respectfully,

Third Assistant Postmaster-General.

MARCH 5, 1909.

MY DEAR SIR: My attention has been drawn to an article in the *Western Review* for January, 1909, written by you under the caption "Pound rates for fraternal journals."

This article, and other statements to which my attention has been called by various publishers, leads me to believe that you have a misunderstanding as to the laws on the subject of second-class mail matter. I feel quite certain that you do not intentionally mislead or misrepresent, and in order that you may have correct information in the premises and thereby be put in position to correctly state the position of the Post-Office Department in future, I address this letter to you in a fraternal spirit.

In the article referred to appears the following statement:

On December 5 last the Postmaster-General made a ruling, which was the second of a series of rulings on the same subject made by his predecessors in the last decade on the sample-copy question, and in making this ruling the Postmaster-General neglected to except from this dragnet the fraternal publications of America. This ruling put a new standard of qualification on publications entitled to pound rates and generally stated that they must be publications not designed primarily for advertising purposes and must have a bona fide paid subscription list. In other words a publisher under this ruling may not send copies of his paper to anyone who has not paid in advance, or contracted to pay in advance at a certain time in the future. All other copies must be sent at the rate of 1 cent per copy, or 1 cent for each 4 ounces or fraction thereof.

If the foregoing statements were intended to refer to publications entered under the act of July 16, 1894, as the other matter in the article quoted from would seem to indicate, they are wholly inac-

curate and misleading, as there is no restriction in the act named as to the method of circulating publications admitted to the second class of mail matter under that act. Circulation may consist of subscriptions made pursuant to resolutions setting apart a part of the annual dues for the purpose, or it may be circulated entirely free, and there is therefore no limitation to the circulation of sample copies. The act of July 16, 1894, contains no restrictions whatever concerning method of circulation, as does the act of March 3, 1879.

The act of March 3, 1879, provides that a periodical to be entered under it must be issued "for the dissemination of information of a public character," or "devoted to the arts, sciences, or some special industry," and "have a legitimate list of subscribers," and furthermore that it "must not be designed primarily for advertising purposes, for free circulation, or for circulation at a nominal rate."

The act of July 16, 1894, was designed especially to benefit, among others, publications "by or under the auspices of a benevolent or fraternal society or order organized under the lodge system and having a bona fide membership of not less than one thousand persons," with the proviso that such publications "shall be originated and published to further the objects and purposes of such society, order, or trades union," etc.

The former act restricts circulation; the latter does not, as subscription lists are not required. The only restriction surrounding publications admitted under the later act is that they may not print general advertising, but must be devoted exclusively to "the furtherance of the purposes of the order," as stipulated.

Many fraternal publications, however, seek admission under the act of March 3, 1879, possibly in order to have the privilege of printing general advertising, but when so admitted they must be treated just the same as other publications admitted under the act of 1879. They can not claim any of the exemptions of the act of 1894.

The real trouble is that many of the publications of the fraternal type want all of the good things of both acts and none of the limitations of either.

If your remarks in the *Western Review* were intended to refer to fraternal publications entered under the act of March 3, 1879, it amounts to a plea for the privileges of the act of July 16, 1894, when not so entered. Manifestly, if a fraternal publication desires to indulge in free circulation and excessive sample-copy circulation, it can do so by securing admission thereof under the act of July 16, 1894, which is specially designed for that purpose. However, a publication can not avail itself of the benefits of one law without also meeting the restrictions of that law.

I think you will agree with me, after giving the matter full investigation, that in fairness to all concerned—the Post-Office Department as well as the publisher—that the fraternal publications would better fill their spheres of usefulness under the act of 1894, which was specially designed for them, than under the act of 1879, and it is the policy of the department to persuade the fraternal publications to seek entry under this special act.

You could be of great service to the department, and to the fraternal publishers as well, in this effort.

I trust you will give the matter careful consideration in the light of the information here given, and advise me as to your views. If

you come to Washington at any time in the near future, I trust you will call upon me so that we may have a full and candid discussion of the questions involved. I happen to be a member of several fraternal organizations, and I assure you that I have no prejudices to overcome.

Respectfully,

Third Assistant Postmaster-General.

Mr. CLINTON C. HOLLENBECK,
Secretary-Treasurer,
National Fraternal Press Association,
Columbus, Ohio.

NATIONAL FRATERNAL PRESS ASSOCIATION,
SECTION OF NATIONAL FRATERNAL CONGRESS,
OFFICE OF THE PRESIDENT,
Detroit, Mich., June 24, 1909.

Hon. A. L. LAWSHE,
Third Assistant Postmaster-General,
Washington, D. C.

DEAR SIR: I have your letter of the 21st instant before me and in reply thereto will say that I thank you for the information you have given me.

Further replying to your letter I will say that the Modern Maccabee has run no advertising of a commercial nature in its columns for the last two months and does not intend to do so as long as the postal laws and the ruling of the Post-Office Department remain as they are.

I wish to thank you for the copy of the letter written to Mr. Hollenbeck. He has recently assumed the general managership of a daily newspaper and I judge he has been pretty busy with his new duties. I will call his attention to your letter and his failure to answer it. I would prefer to have him finish the discussion started by him and with which he is more familiar than I.

Thanking you for your favor, I remain,

Yours, very truly,

STEPHEN D. WILLIAMS, *President.*

COLUMBUS, OHIO, *June 25, 1909.*

Hon. A. L. LAWSHE,
Third Assistant Postmaster-General,
Washington, D. C.

MY DEAR SIR: Hon. S. D. Williams, the president of the National Fraternal Press Association, has just called my attention to the fact that your letter of March 5, taking up the matter of my article published in the Western Review for January, 1909, has not been answered. I beg to inform you that the same will have my early attention. The delay was caused by reason of the reference of the letter to Mr. Williams.

Yours, very truly,

THE PRESS-POST,
C. C. HOLLENBACK,
General Manager.

EXHIBIT K.

A copy of the Modern Brotherhood, published at Cedar Rapids, Iowa, dated November, 1909.

EXHIBIT L.

A copy of the Lady Maccabee, published at Port Huron, Mich., dated February, 1910.

EXHIBIT M.

COPY OF THE OPINION OF JUSTICE BARNARD, OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, IN THE CASE OF THE CHICAGO BUSINESS COLLEGE, PETITIONER, V. HENRY C. PAYNE, POSTMASTER-GENERAL, ET AL.

[Circular XVII.—Mandamus proceedings against the Postmaster-General in case of Business Education, published by the Chicago Business College, Chicago, Ill.]

The following is the full text of the opinion rendered by Justice Barnard in the above case:

In the supreme court of the District of Columbia.

THE CHICAGO BUSINESS COLLEGE, PETITIONER,	} No. 45316. Law.
v.	
HENRY C. PAYNE, POSTMASTER-GENERAL, ET AL.	

There are two questions in this case which have been presented by able arguments and which have been carefully considered by the court.

The first is as to the construction of the act of Congress of July 16, 1894, admitting to the mails certain publications issued by, and to further the objects and purposes of, certain societies, orders, or institutions of learning at the rate of second-class matter.

The second arises only in case the court should hold that the ruling of the Post-Office Department was erroneous in its present construction of said act, and it would then be for the court to decide whether or not it had jurisdiction to correct such erroneous ruling, and direct by its writ of mandamus the Postmaster-General to permit the publication in question to be carried as second-class matter.

No question is made as to the character of the publication itself. It is a weekly publication entitled "Business Education" and is issued by the petitioner, the Chicago Business College, in its own interest, and is distributed as a gift to its patrons and others in order to further its objects as a joint stock company conducting a business college for the financial benefit of its stockholders, who are its officers and teachers in its school as well. Its apparent purpose is to advertise the Chicago Business College and to encourage business education generally.

The act in question is as follows:

Provided, That from and after the passage of this act all periodical publications issued from a known place of publication at stated intervals and as frequently as four times a year, by or under the auspices of a benevolent or fraternal society or order organized under the lodge system, and having a bona fide membership of not less than one thousand persons, or by a regularly incorporated institution of learning, or by or under the auspices of a trades union, and all publications of strictly professional, literary, historical, or scientific societies, including the bulletins issued by state boards of health, shall be admitted to the mails as second-class matter and the postage thereon shall be the same as on other second-class matter and no more: *Provided further*, That such matter shall be originated and published to further the objects and purposes of such society, order, trades union, or institution of learning and shall be formed of printed paper sheets without board, cloth, leather, or other substantial binding, such as distinguish printed books for preservation from periodical publications. (28 Stat. L., 105.)

While private schools and other educational institutions are doing a great public good by instructing children and youth in many useful things, this act does not offer to them any cheaper rate of postage than that allowed to individual citizens, but does offer to the various public, or quasi-public, and fraternal or beneficial orders and associations named such facilities, and also offers the same to any "regularly incorporated institution of learning."

No question is raised as to the incorporation of the petitioner, although counsel stated, in oral argument, that one object of its incorporation under the general statute authorizing such incorporation in the State of Illinois was to give it the benefit of the cheaper postage as provided by the said act of Congress. Its work is similar to that of other business colleges, and these institutions are undoubtedly doing much good in the world by fitting young men and women for various positions of usefulness, and might with propriety be aided by being included with other public agencies in a list of those to be granted cheaper postage than the ordinary citizen or private firm or voluntary association; but the question before the Postmaster-General was, Is the business college such an "institution of learning" as Congress contemplated in its said act?

The benevolent or fraternal societies are required to have a membership of not less than 1,000 persons before they can have the benefit of second-class mail rates for their publications, and the publications to be admitted must be originated and published to further the objects and purposes of the society or institution. These two parts of the act indicate to my mind that the benefit to be granted was one to the public and not to the stockholders or members of any business organization. In other words, the matter to be so carried was to be of a character that interested and benefited at least 1,000 persons, if the society was of a benevolent or fraternal character, organized on the lodge system, and if of the other characters named, that a large number of recipients of the publications might be benefited by receiving useful information and instruction. It does not seem correct to conclude that Congress intended by said act to give any money-making corporation the right to cheaper rates of postage on advertisements for no other reason than to enable them to save on their expenses and thus make more money.

Among the definitions of the word "institution" as given by Webster in his unabridged dictionary are these:

An established or organized society; an establishment, especially of a public character, or affecting a community.

The Standard Dictionary gives, among others, this definition:

A corporate body or establishment instituted and organized for public use.

It seems to me that such was the meaning which Congress intended should be given the word "institution" as used in this act, and did not intend to include in the words "a regularly incorporated institution of learning" the various schools for special purposes existing all over the country, although they might be regularly incorporated.

Suppose, however, there is some question about this being the proper construction, and that the court might well say that a business college teaching these useful branches calculated to give its pupils proficiency in writing, bookkeeping, and arithmetic (including, of course, shorthand writing and typewriting) was such an "institution of learning" as was intended by Congress in the wording of said act, would the law authorize the court to review and correct the judgment of the executive department of the Government whose duty it is to construe and execute the statutes relating to the mail? Can the act of considering the meaning of a statute, where the same is not plainly worded, be considered a ministerial act?

If there was no question of construction here; if the Government admitted that the petitioner was in the class defined in the statute, but notwithstanding the Postmaster-General had insisted that its publications should be excluded for some reason or policy of his own, then the court might not hesitate to exercise the jurisdiction vested in it and direct the executive officer to comply with the law; but where there is a question of construction, and judgment must be exercised by the executive officer in order to ascertain what is meant, then it seems to me there is no appeal to this court to correct such judgment in case the court might think the construction of the department was erroneous. (*Decatur v. Paulding*, 14 Pet., 497; *U. S. ex rel. Dunlap v. Black*, 128 U. S., 40; *U. S. ex rel. Hall v. Whitney*, 5 Mack., 370.) The act of the executive department complained of in this proceeding is the refusal of the Postmaster-General to allow the paper published by the petitioner to be carried at second-class rates; and this refusal is based upon the opinion of the Assistant Attorney-General for the Post-Office Department that a business college of the class of corporations to which the petitioner belongs is not a "regularly incorporated institution of learning" within the meaning of said act. I fully agree with that opinion, but if I did not, sitting as a court having authority to compel the performance of a ministerial act, I should hesitate to issue a writ compelling the exercising of a judicial act, such as the construction of a statute is. If the courts should differ in judgment with the executive officers of the Government as to the meaning of the various laws the latter are charged with executing, and should compel them to follow the views of the courts in place of their own judgment, there would be a substitution of the judicial mind for that of the executive, and that is not contemplated under our Constitution.

For these reasons, and without reviewing the various authorities cited or further prolonging this opinion, I will refuse to issue the writ of mandamus, and will dismiss the petition in this cause.

JOE BARNARD, *Justice*.

The foregoing decision was affirmed by the court of appeals of the District of Columbia in an opinion rendered December 3, 1903, in which the court said:

* * * We think that it is not an "institution of learning" such as Congress had in view. We think the court below rightly so held. We think the Postmaster-General was entirely correct in his view of the law and fully justified in his exclusion of the relator's publication from the privileges of second-class mail matter. It is our conclusion that the order appealed from should be affirmed with costs. And it is so ordered.

Postmasters will preserve this opinion on file in order to be able to advise publishers who make inquiry, and thereby, as much as possible, avoid correspondence with the department.

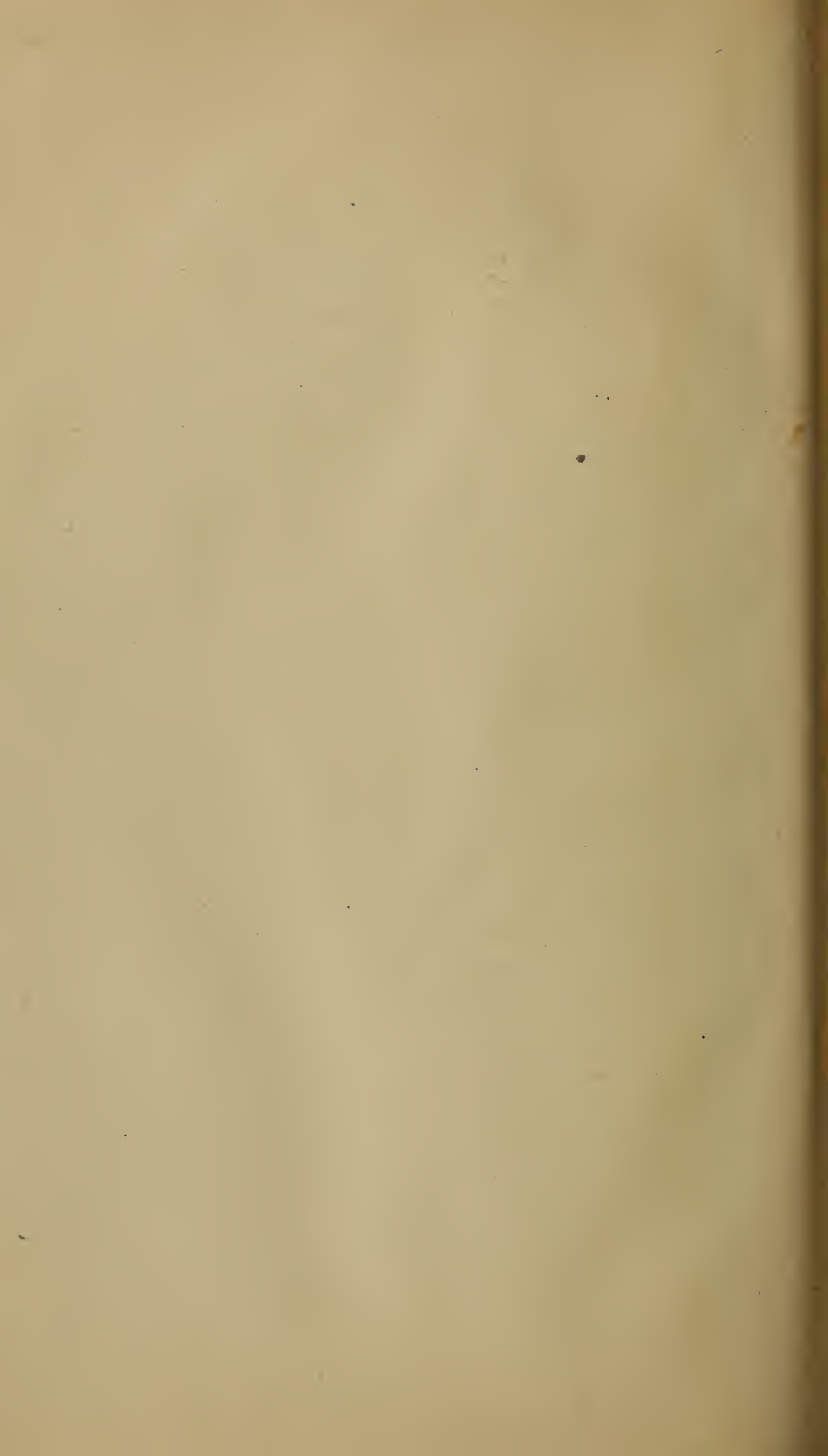
EDWIN C. MADDEN,
Third Assistant Postmaster-General.

POST-OFFICE DEPARTMENT,
OFFICE OF THE THIRD ASSISTANT POSTMASTER-GENERAL,
Washington, D. C., August 1, 1904.

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